

STATE OF MICHIGAN
SEVENTEENTH JUDICIAL CIRCUIT COURT (KENT COUNTY)

THE PEOPLE OF THE
STATE OF MICHIGAN

 ORIGINAL

-v-

Case No. 11-11910-FH
11-11911-FH

KELVIN WAYNE HEATH,

RCVD & FILED

Defendant.

SEP 11 2012

JUDGE BUTH
17TH CIRCUIT COURT

JURY TRIAL -- VOLUME 1 OF 2

BEFORE THE HONORABLE GEORGE S. BUTH, CIRCUIT JUDGE

Grand Rapids, Michigan - Tuesday, March 27, 2012

APPEARANCES:

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REC'D & FILED

SEP 11 2012

CIRCUIT COURT ADMINISTRATION

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KENT COUNTY
CIRCUIT COURT
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Grand Rapids, Michigan

Tuesday, March 27, 2012

(At about 8:58 a.m. - Court in session)

THE COURT: We're on the record here waiting for jurors to come up in two cases, People versus Kelvin Wayne Heath. Each one contains an unarmed robbery count and unlawful imprisonment count, each one of which carries a maximum period of imprisonment of 15 years. And then each case has an impersonating a public officer count that carries a maximum of one year.

Mr. Bramble, you're set to pick a jury on both cases and try the matter?

MR. BRAMBLE: Yes, your Honor.

THE COURT: All right. Ms. Foster, you're all set?

MS. FOSTER: Yes, your Honor.

THE COURT: Just so we're clear here, is there any plea offer? And I would just address the defendant right now.

If you lose in front of the jury, you'll have two convictions -- well, two cases where your convictions will carry anywhere up to a maximum of life in prison.

3

Do you understand that, Mr. Heath?

THE DEFENDANT: (No verbal response)

THE COURT: Mr. Heath, do you understand that?

THE DEFENDANT: Yeah, I understand.

THE COURT: Okay. And is there any offer at this point, Mr. Bramble?

MR. BRAMBLE: There is, your Honor. One count of larceny from a person in each file, and we would dismiss the remainder of the charges, including the Supplemental Information.

THE COURT: The maximum on larceny person is ten years; correct?

MR. BRAMBLE: Correct, your Honor.

THE COURT: Ms. Foster?

MS. FOSTER: Yes. That's the understanding; larceny from a person, two counts; dismiss the balance.

THE COURT: And your client is going to reject that and proceed with a jury pick?

MS. FOSTER: Yes. But can we just at least for clarification let my client know fully the guideline ranges on -- what would be the guideline range -- if he were to take the plea bargain, what the guideline were if he's convicted of all of the charges --

THE COURT: Sure.

MS. FOSTER: -- with the supplemental.

4

1 Now I had originally indicate -- let's talk about
2 the actual guidelines. The actual guidelines for the
3 unarmed robbery plus with the other added counts, the
4 unarmed robbery being the most serious, but with the added
5 counts, in my estimation, puts him at F5 range, which would
6 be 58 to 114 months without the supps, which would be 58 to
7 228 on the minimum with the supps.
8 Is that what you have, Mr. Bramble?
9 MR. BRAMBLE: That's what I have.
10 MS. FOSTER: If he were to take advantage of the
11 plea bargain -- I originally said that they probably would
12 be F5, but since you are eliminating the impersonating a
13 police officer -- two counts of impersonating a police
14 officer and two counts of unlawful imprisonment, I think
15 that throws him down quite a bit. I'm thinking he's
16 probably, at the worst, F3 range, which is 29 to 57 months
17 on the minimum with a cap of 57 months because there will be
18 no supps involved.
19 THE COURT: All right. Do you want to talk with
20 your client anymore, Ms. Foster?
21 MS. FOSTER: I think he's ready to go. I just
22 wanted him to understand, if he were to take the deal right
23 now, he's looking at 29 to the 57 months. If he goes to
24 trial and loses, he's looking at 58 to 228 months on the
25 minimum and up to life imprisonment on the max.

5

1 But I believe he wants to go forward. Is that
2 correct, Mr. Heath?
3 THE DEFENDANT: What, 29 months to something, two
4 years, whatever it is? I'm not takin' no two years.
5 MS. FOSTER: So your answer is you want to go
6 forward with a trial?
7 THE DEFENDANT: Yeah, I want to go to trial.
8 MS. FOSTER: Okay. He's indicated -- he's
9 rejected the offer and wants to go forward with a trial.
10 THE COURT: Anything else we need to cover,
11 Mr. Bramble, before selecting the jury?
12 MR. BRAMBLE: I don't believe so, your Honor.
13 THE COURT: Ms. Foster, anything else?
14 MS. FOSTER: Only thing is I believe all these
15 other issues have been already discussed in previous motions
16 and whatnot. The Court had decided to combine these cases.
17 I argued against that. The Court rejected my argument, and
18 we are going forward with these consolidated cases. I just
19 want the record to reflect that I did oppose -- I do
20 continue to oppose the consolidation of these two cases.
21 There was a period of time in between the first and the
22 second alleged incident and there are some differences --
23 nuance differences between the two, and I would just stand
24 by my opposition to the Court's ruling on this matter, your
25 Honor.

6

1 Other than that, I don't have anything further.
2 THE COURT: I say the operative word there is
3 "nuance." I'll leave it at that.
4 MS. FOSTER: Okay.
5 THE COURT: All right. We will -- Ms. Foster, off
6 the record.
7 (Discussion off the record)
8 (At 8:58 a.m., break had)
9 (At 9:19 a.m., panel seated)
10 THE COURT: Good morning.
11 I'm Judge George Buth. I'll be presiding over
12 this matter. We're actually trying two cases together
13 today, each one entitled People of the State of Michigan
14 versus Kelvin Wayne Heath.
15 Seated on my right is my clerk, Marlene Gould; on
16 my left is my court reporter, Leslie Rydahl. On your right
17 at counsel table is Assistant Kent County Prosecutor Kevin
18 Bramble. Seated next to him is Wyoming Officer Philip
19 Swiercz. Seated on your left at counsel table is Defense
20 Attorney Valerie Foster.
21 MS. FOSTER: Good morning.
22 THE COURT: Seated next to her is her client, the
23 defendant, Mr. Heath.
24 Then she also has three externs seated with her.
25 MS. FOSTER: Their names, this is Mr. Simpson,

7

1 Alton Simpson; and this is Mr. Brad Seigman. And this is
2 Laura Joyce, and they're all law students shadowing me and
3 learning the ropes.
4 THE COURT: Any of the potential witnesses in this
5 case will be mentioned to you during voir dire.
6 We will be going all day today and all day
7 Thursday. We'll complete the case sometime on Thursday. If
8 any of you have a conflict with that schedule, if any of you
9 have any health issues such as seeing, hearing, sitting for
10 long periods of time, call that to our attention.
11 As I said, this is a criminal case. The paper
12 used to charge the defendant with a crime or crimes is
13 called an Information. The Information in the first case
14 charges the defendant -- actually in each one of these cases
15 there are identical charges, Counts One, Two and Three.
16 Count One, unarmed robbery; Count Two, unlawful
17 imprisonment; Count Three, impersonating a public officer.
18 The first Information reads as follows:
19 That on or about November 14 of the year 2011, at
20 2983 Burlingame Avenue, City of Wyoming, Kent County, that
21 in Count One the defendant did, in the course of committing
22 a larceny of money, assault or put in fear a person present,
23 Brian Gray; contrary to Michigan law.
24 Count Two, defendant did knowingly restrain Brian
25 Gray to facilitate the commission of larceny of money,

8

again, contrary to Michigan law.
In Count Three, defendant of an unlawful purpose represent to Brian Gray that he was a peace officer when he was not a peace officer, again, contrary to Michigan law.

The second case, on or about November 29 of the year 2011 at 3001 Burlingame Avenue, City of Wyoming, Kent County, in Count One, that defendant did in the course of committing a larceny of money, assault or put in fear a person present, Barry Isaacson; contrary to Michigan law.

In Count Two, defendant did knowingly restrain Barry Isaacson to facilitate the commission of larceny of money from his person, again; contrary to Michigan law.

Finally, in Count Three, defendant did for an unlawful purpose represent to Barry Isaacson that he was a peace officer when he was not a peace officer, again; contrary to Michigan law.

The defendant has pled not guilty to each one of these charges. You should clearly understand that the Informations I have just read are not evidence. An Information is read in every criminal trial so that the defendant and jury can hear the charges. You must not think it is evidence of his guilt or that he must be guilty because he has been charged.

A person accused of a crime is presumed to be

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innocent. This means that you must start with the presumption that the defendant is innocent. This presumption continues throughout the trial and entitles the defendant to a verdict of not guilty unless you are satisfied beyond a reasonable doubt that he is guilty.

Every crime is made up of parts called elements. The prosecutor must prove each element of the crime beyond a reasonable doubt. The defendant is not required to prove his innocence or to do anything. If you find that the prosecutor's not proven every element beyond a reasonable doubt, then you must find the defendant not guilty.

A reasonable doubt is a fair, honest doubt growing out of the evidence or lack of evidence. It is not merely an imaginary or possible doubt, but a doubt based on reason and common sense. A reasonable doubt is just that -- a doubt that is reasonable, after a careful and considered examination of the facts and circumstances of this case.

I know that jury duty may be a new experience for some of you. Jury duty is one of the most serious duties that members of a free society are asked to perform. Our system of self-government do not exist without it.

The jury is an important part of this court. The right to a jury trial is an ancient tradition and part of our heritage. The law says that both a person who is accused of a crime and the prosecution have the right to a

10

trial, not by one person but by a jury of twelve impartial persons.

Jurors must be as free as humanly possible from bias, prejudice, or sympathy for either side. Each side in a trial is entitled to jurors who keep open minds until the time comes to decide the case.

A trial begins with jury selection. The purpose of this process is to obtain information about you that will help us choose a fair and impartial jury to hear this case.

During jury selection the lawyers will ask you questions. This is called the voir dire. The questions are meant to find out if you know anything about the case. Also, we need to find out if you have any opinions or personal experiences that might influence you for or against the prosecution, the defendant, or any witnesses. One or more of these things could cause you to be excused in this particular case, even though you may otherwise be qualified to be a juror.

The questions may probe deeply into your attitudes, beliefs, and experiences. They are not meant to be an unreasonable prying into your private life. The law requires that we obtain this information so that an impartial jury can be chosen.

If you do not hear or understand a question, you should say so. If you do understand it, you should answer

11

it truthfully and completely. Please do not hesitate to speak freely about anything you believe we should know.

During jury selection you may be excused from serving on the jury in one of two ways. First, I may excuse you for cause; that is, I may decide that there's a valid reason why you cannot or should not serve in this case. Or, a lawyer from one side or the other may excuse you without giving any reason for doing so. This is called a peremptory challenge. The law gives each side the right to excuse a certain number of jurors in this way. If you are excused, you should not feel bad or take it personally. As I explained before, there simply may be something that causes you to be excused from this particular case.

If you'd all please stand, my clerk will swear you in.

THE CLERK: Would you raise your right hands, please?

Will you solemnly swear or affirm that you will truthfully and completely answer all questions about your qualifications to serve as jurors in this cause, so help you God?

THE JURY: (Responds affirmatively)

(At 9:27 a.m., panel sworn)

THE COURT: We will be seating fourteen jurors up here. The first juror selected should sit in the back row.

12

1 Mr. Bramble, a question or
2 MR. BRAMBLE: I never got
3

4 THE COURT: Oh.

5 THE CLERK: (Distributing jury seating chart)

6 THE COURT: First juror selected should sit in the
7 back row in the chair closest to you, one through seven,
8 working across the back, away from you. Juror Number Eight
9 will sit in the front row, the juror closest to you, eight
10 through fourteen across the front.

11 Please listen carefully for your name. The
12 numbers that we are using internally here are most likely
13 different than the number you were assigned downstairs.

14 Go ahead, please.

15 THE CLERK: Number 31, Nicholas Bogert.

16 Number 40, Laura Stahle.

17 Number 27, Alison Hodgson.

18 Number 4, Craig Miller.

19 Number 16, Hadiya Muhammad.

20 Number 12, James VanEssen.

21 Number 30, Sharon Ingersoll.

22 Number 28, Leslie Daniels.

23 Number 7, Ashlee Roberts.

24 Number 18, Seneca Wilcox.

25 Number 23, Daniel Siegel.

Number 21, Michelle Rowland.

13

1 Number 2, Ruth Siagle.

2 Number 34, Alessandro Libriani.

3 THE COURT: Mr. Bramble.

4 MR. BRAMBLE: Thank you, your Honor.

5 Ladies and gentlemen of the jury, as Judge Buth
6 indicated, this is my opportunity to question you in voir
7 dire. I'm going to ask you some questions and defense
8 counsel is going to ask you some questions. Those questions
9 aren't meant to embarrass or to pry into your personal life;
10 they're simply meant to gain a little bit more information
11 about you, because all the information we have is just that
12 limited information that was on that jury questionnaire form
13 that you filled out some time ago.

14 I caution people who are sitting in the back here
15 that haven't been chosen yet. If you'll make sure you can
16 listen and make sure you could hear me and defense counsel,
17 because inevitably people get removed from here, and one of
18 you have to replace them. And so, if you can kind of make a
19 mental note, if you would respond if you were up here, it
20 will help move things along a little more quickly.

21 As the Judge indicated, I'm going to give you a
22 list of witnesses here and see if any of you recognize the
23 names.

24 Robert Augnst. He is a police officer with the
25 City of Wyoming; Officer Jonathan Durell; Officer Swiercz;

14

1 Officer Anthony Jacob; Officer D.J. VerHage; Officer Dennis
2 Ferguson; Officer Ada Arlone; Officer Christopher DeBoer;
3 Officer Matthew Rooks; Officer Ryan Silvis; Officer Jesse
4 Lopez; Barry Gordon Isaacson; Eleanor Griffin; Jerrell
5 Heath; Anthony Johnson; Deon Moody; Terry Demontae Houston.
6 Those are just a list of potential witnesses I might call.

7 Does anyone recognize any of those names?

8 Ma'am, is it Stahle?

9 JUROR SEAT #2: Stahle, yep.

10 MR. BRAMBLE: Stahle. All right. What name can
11 you recognize there?

12 JUROR SEAT #2: Eleanor Griffin. I think she used
13 to work for a company I worked for.

14 MR. BRAMBLE: Okay. How long ago?

15 JUROR SEAT #2: Ten years ago maybe.

16 MR. BRAMBLE: All right. Did you work with her
17 directly?

18 JUROR SEAT #2: No. I worked in the front office
19 and she worked -- if she's the same person, she worked as a
20 teacher at one of the Head Start programs.

21 MR. BRAMBLE: Okay. Anything about that that
22 would prevent you from sitting as a fair and impartial
23 juror?

24 JUROR SEAT #2: No.

25 MR. BRAMBLE: Okay. And Mr. Miller, you recognize

15

1 some of the police officers' names?

2 JUROR SEAT #4: Correct.

3 MR. BRAMBLE: That's because you worked as a
4 probation officer; correct?

5 JUROR SEAT #4: Correct.

6 MR. BRAMBLE: Anything about the work you do or
7 that -- your knowledge or familiarity with any of these
8 police officers that would prevent you from sitting and
9 following the Judge's instructions?

10 JUROR SEAT #4: No.

11 MR. BRAMBLE: Okay. Anyone else think they may
12 have recognized any of those names that I read off?

13 THE JURY: (Responds negatively)

14 MR. BRAMBLE: How many of you have served as
15 jurors before?

16 JUROR SEAT #2: (Raising hand)

17 MR. BRAMBLE: Ms. Stahle, you have?

18 JUROR SEAT #2: Yes.

19 MR. BRAMBLE: Was that here in Kent County?

20 JUROR SEAT #2: Yes.

21 MR. BRAMBLE: And was it here in this building?

22 JUROR SEAT #2: No. It was in the old building.
23 It was back about 20 years ago.

24 MR. BRAMBLE: Do you know, was it a civil case or
25 a criminal case?

16

JUROR SEAT #2: Criminal.

MR. BRAMBLE: And what if case was it, if you

remember?

JUROR SEAT #2: It was a theft from a car.

MR. BRAMBLE: All right. Did you actually go to deliberation on it?

JUROR SEAT #2: Yes.

MR. BRAMBLE: Anything about that that would prevent you from sitting here as a fair and impartial juror?

JUROR SEAT #2: No.

MR. BRAMBLE: Okay.

Anyone on the panel besides Mr. Miller that knows some police officers?

I'll start in the back row with you, Mr. VanEssen.

How do you know some police officers?

JUROR SEAT #6: I am retired from the City of Wyoming. So, I have been around a few officers, acquaintances. This gentleman here looks familiar, Mr. Swiercz.

MR. BRAMBLE: Do you know him well, though?

JUROR SEAT #6: No, no.

MR. BRAMBLE: Do you know any of these officers real well?

JUROR SEAT #6: No.

MR. BRAMBLE: Do you think your contact with them,

17

JUROR SEAT #9: No.

MR. BRAMBLE: Anything about that that would

prevent you from sitting as a fair and impartial juror?

JUROR SEAT #9: No.

MS. FOSTER: Excuse me. My client is deaf in one ear and he's having a hard time hearing.

THE REPORTER: (Distributing headset)

MR. BRAMBLE: Anyone else in the front row?

Okay, Ms. Rowland?

JUROR SEAT #12: I know a Traci Ludwig and Randy Haverkamp.

MR. BRAMBLE: What department do they work for?

JUROR SEAT #12: They are Kent County Sheriff Department.

MR. BRAMBLE: How well do you know them?

JUROR SEAT #12: I see them maybe a couple times a year.

MR. BRAMBLE: Anything about that that would prevent you from sitting as a fair and impartial juror?

JUROR SEAT #12: No, sir.

MR. BRAMBLE: Okay. Regarding police officers, has anyone on the panel had a bad experience with a police officer? I don't care if it's something as minor as a traffic ticket. Anyone had a bad experience with a police officer? Okay.

19

which you might have had, would prevent you from sitting as a fair and impartial juror?

JUROR SEAT #6: No.

MR. BRAMBLE: Ms. Roberts, what police officers do you know?

JUROR SEAT #9: My father and uncle are police officers.

MR. BRAMBLE: What department was your father --

JUROR SEAT #9: Kent County.

MR. BRAMBLE: All right. Is he still with the department?

JUROR SEAT #9: No. He retired like 12 years ago.

MR. BRAMBLE: Anything about that that would prevent you from sitting as a fair and impartial juror?

JUROR SEAT #9: No.

MR. BRAMBLE: All right. And you said your uncle was also?

JUROR SEAT #9: (Nods head affirmatively)

MR. BRAMBLE: What department did he work for?

JUROR SEAT #9: I believe the Grand Rapids Police Department.

MR. BRAMBLE: And was this a while ago, as well?

JUROR SEAT #9: Yeah.

MR. BRAMBLE: Did you discuss his work with him very much?

18

Anyone on the panel that has had an experience with a police officer that would prevent them from sitting and listening to their testimony just as you would any other persons? Okay.

Anyone on the panel know anyone who's been either accused, charged or convicted of a crime? Know anyone who's been accused, charged or convicted of a crime? Okay.

I'll start with you, Mr. Bogert.

JUROR SEAT #1: My brother.

MR. BRAMBLE: What type of offense was it?

JUROR SEAT #1: Theft.

MR. BRAMBLE: And anything -- was it here in Kent County?

JUROR SEAT #1: Yes.

MR. BRAMBLE: Did you know that much about the case?

JUROR SEAT #1: Some, yes.

MR. BRAMBLE: Okay. Did you feel he was treated fairly by the police, the prosecution or the judge?

JUROR SEAT #1: Yes.

MR. BRAMBLE: Okay. And my reason for asking you that is I don't want someone who's got an axe to grind against the system here or against the police officers. You understand that?

JUROR SEAT #1: Okay.

20

1 MR. BRAMBLE: Ms. Stahle, did you raise your hand?

2 JUROR SEAT #2: Yes.

3 MR. BRAMBLE: Who do you know?

4 JUROR SEAT #2: My nephew.

5 MR. BRAMBLE: All right. What type of offense?

6 JUROR SEAT #2: Murder.

7 MR. BRAMBLE: All right. Here in Kent County?

8 JUROR SEAT #2: No.

9 MR. BRAMBLE: Where, please?

10 JUROR SEAT #2: Lake County.

11 MR. BRAMBLE: Did you feel he was treated fairly?

12 JUROR SEAT #2: The case is just going on. It
13 hasn't gone to court yet.

14 MR. BRAMBLE: Okay. Ms. Hodgson, did you raise
15 your hand?

16 JUROR SEAT #3: Yes.

17 MR. BRAMBLE: Who do know who's either been
18 accused, charged or convicted of a crime?

19 JUROR SEAT #3: A cousin of mine is involved in a
20 robbery. He was down in Florida years and years ago.

21 MR. BRAMBLE: Did you know that much about it?

22 JUROR SEAT #3: I was young. His mythology was he
23 hadn't been in Florida and worked it out later since.

24 MR. BRAMBLE: Do you have an axe to grind against
25 the police or anything about that?

21

1 JUROR SEAT #3: No.

2 MR. BRAMBLE: No. Mr. Miller, because of your
3 work, you do?

4 JUROR SEAT #4: Correct.

5 MR. BRAMBLE: All right. Again, you feel you can
6 follow the Judge's instructions?

7 JUROR SEAT #4: Yes, sir.

8 MR. BRAMBLE: Okay. And who else in the back row
9 raised -- anyone else in the back row?

10 Okay, Ms. Ingersoll?

11 JUROR SEAT #7: Um-hmm (affirmatively)

12 MR. BRAMBLE: Who do you know who's been either
13 accused, charged or convicted of a crime?

14 JUROR SEAT #7: My son.

15 MR. BRAMBLE: And here in Kent County?

16 JUROR SEAT #7: Um-hmm (affirmatively).

17 MR. BRAMBLE: And what type of offense was it?

18 JUROR SEAT #7: Fleeing and eluding.

19 MR. BRAMBLE: Oh, all right. Do you know what
20 department it was?

21 JUROR SEAT #7: As far as the --

22 MR. BRAMBLE: What police agency.

23 JUROR SEAT #7: Kent County.

24 MR. BRAMBLE: Sheriff's Department.

25 JUROR SEAT #7: Um-hmm (affirmatively). I think

22

1 State police, too.

2 MR. BRAMBLE: Okay. Did it -- did you feel he was
3 treated appropriately?

4 JUROR SEAT #7: Yes.

5 MR. BRAMBLE: All right. By the police?

6 JUROR SEAT #7: Um-hmm (affirmatively).

7 MR. BRAMBLE: Okay. And again, for the same
8 reason, I don't want you saying, "Geez, they didn't treat my
9 son fairly, so I'm going to take it out on this case."

10 That's doesn't sound like it's the situation with you.

11 JUROR SEAT #7: No.

12 MR. BRAMBLE: Okay. How about in front row?

13 Anyone know anyone who's been accused, charged or convicted
14 of a crime? All right.

15 Ms. Roberts.

16 JUROR SEAT #9: Um-hmm (affirmatively).

17 MR. BRAMBLE: Who do you know that's been accused,
18 charged or convicted of a crime?

19 JUROR SEAT #9: My brother.

20 MR. BRAMBLE: All right. What did he get
21 convicted of?

22 JUROR SEAT #9: I -- I honestly don't know the
23 formal conviction, but it was convicted of masturbation in
24 public.

25 MR. BRAMBLE: So, like an indecent exposure type

23

1 of thing?

2 JUROR SEAT #9: Yes.

3 MR. BRAMBLE: How long ago?

4 JUROR SEAT #9: Six months ago.

5 MR. BRAMBLE: Here in Kent County?

6 JUROR SEAT #9: Yep.

7 MR. BRAMBLE: Do you feel he was treated fairly by
8 the police, the prosecution?

9 JUROR SEAT #9: (Nods head affirmatively)

10 MR. BRAMBLE: Again, you don't have an axe to
11 grind against this case, or the system or anything of that
12 nature?

13 JUROR SEAT #9: No. It was his own fault.

14 MR. BRAMBLE: Ms. Wilcox, you know someone?

15 JUROR SEAT #10: Multiple people.

16 MR. BRAMBLE: Any of them that are close to you?

17 JUROR SEAT #10: My brother was convicted of
18 accessory to B&E about twelve years ago.

19 MR. BRAMBLE: The people that you know, have they
20 been treated fairly as far as you know?

21 JUROR SEAT #10: Yes.

22 MR. BRAMBLE: Anything about that that would
23 prevent you from sitting as a fair and impartial juror?

24 JUROR SEAT #10: No.

25 MR. BRAMBLE: All right. Mr. Siegel, you raised

24

1 your hand, as well?
2 JUROR SEAT #12: Yes, sir.
3 MR. BRAMBLE: You did not. All right.
4 Ms. Rowland?
5 JUROR SEAT #12: Umm, my husband for assault.
6 MR. BRAMBLE: All right. And how long ago,
7 please?
8 JUROR SEAT #12: Approximately a year-and-a-half
9 ago.
10 MR. BRAMBLE: Here in Kent County?
11 JUROR SEAT #12: Yes, sir.
12 MR. BRAMBLE: And again, I'm not trying to harass
13 you or embarrass you, but did you feel he was treated fairly
14 by the system?
15 JUROR SEAT #12: Yes, sir.
16 MR. BRAMBLE: Were you present when the assault
17 took place?
18 JUROR SEAT #12: Yes.
19 MR. BRAMBLE: Ms. Slagle, did you raise your hand?
20 JUROR SEAT #13: Yes.
21 MR. BRAMBLE: Who do you know that's been --
22 JUROR SEAT #13: My son.
23 MR. BRAMBLE: Here in Kent County?
24 JUROR SEAT #13: Yeah.
25 MR. BRAMBLE: What type of offense, please?

25

1 JUROR SEAT #13: Under the influence and fleeing
2 and eluding an officer.
3 MR. BRAMBLE: Did you feel he was treated fairly
4 by the police?
5 JUROR SEAT #13: Kind of, yeah.
6 MR. BRAMBLE: And kind of not?
7 JUROR SEAT #13: I don't -- just -- yes, but I
8 don't -- I don't know.
9 MR. BRAMBLE: All right. Did it actually go
10 through the system?
11 JUROR SEAT #13: Yeah.
12 MR. BRAMBLE: Did he plead guilty to it?
13 JUROR SEAT #13: I -- I don't remember because I
14 wasn't in the -- I wasn't in the courtroom.
15 MR. BRAMBLE: Okay. But you thought maybe he
16 wasn't treated fairly in some respects, I take it?
17 JUROR SEAT #13: Yeah. There were some things I
18 wasn't, you know, really happy about. But I don't know.
19 MR. BRAMBLE: My reason for questioning you a
20 little bit on this is do you feel you could sit and listen
21 to a police officer's testimony just like you would anyone
22 else's?
23 JUROR SEAT #13: I could try.
24 MR. BRAMBLE: Okay. I take it your problem was
25 with the police officers that --

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1 JUROR SEAT #13: Well it was just really a -- it
2 was just a messed up -- I mean, it was like he wasn't --
3 my son wasn't totally innocent, but it was just -- it was
4 just, you know, it went on like when he was in his later
5 teen-age years. So, it's been a while but...
6 MR. BRAMBLE: Okay. Mr. Libriani, did you raise
7 your hand?
8 JUROR SEAT #14: Yep.
9 MR. BRAMBLE: Who do you know, please?
10 JUROR SEAT #14: My good friend got a DUI.
11 MR. BRAMBLE: Here in Kent County?
12 JUROR SEAT #14: No. I don't know what county it
13 was, but it was up in Mt. Pleasant.
14 MR. BRAMBLE: Isabella County maybe?
15 JUROR SEAT #14: Sure, yeah.
16 MR. BRAMBLE: Anything about that that would
17 prevent you from sitting as a fair and impartial juror?
18 JUROR SEAT #14: No.
19 MR. BRAMBLE: Do you feel from what you knew that
20 he was treated fairly?
21 JUROR SEAT #14: Yeah.
22 MR. BRAMBLE: Okay.
23 MS. FOSTER: Somebody just raised their hand.
24 MR. BRAMBLE: Yes, Ms. Muhammad.
25 JUROR SEAT #5: I have a son that was convicted of

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1 possession of marijuana.
2 MR. BRAMBLE: Okay. Here in Kent County?
3 JUROR SEAT #5: Yes.
4 MR. BRAMBLE: Did you feel he was treated fairly?
5 JUROR SEAT #5: By the police?
6 MR. BRAMBLE: By the police.
7 JUROR SEAT #5: No.
8 MR. BRAMBLE: No? Okay.
9 Again, I'm not meaning to embarrass or pry, but
10 has anyone on the panel themselves been either accused,
11 charged or convicted of a crime?
12 JUROR SEAT #13: (Raising hand)
13 MR. BRAMBLE: You have?
14 JUROR SEAT #13: I don't know if it was a crime.
15 It was a DUI.
16 MR. BRAMBLE: Did you feel you were treated
17 fairly?
18 JUROR SEAT #13: No.
19 MR. BRAMBLE: Okay. Anyone on the panel been the
20 victim of a crime?
21 Ms. Hodgson, what type of offense.
22 JUROR SEAT #3: Arson. My house was burned down.
23 MR. BRAMBLE: How long ago?
24 JUROR SEAT #3: It's -- in June it will be two
25 years.

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MR. BRAMBLE: All right. He in Kent County?

JUROR SEAT #3: Um-hmm (affirmatively).

MR. BRAMBLE: Did they ever catch who did it?

JUROR SEAT #3: Well, ours was the first. There was a string of arsons. Ours was the first. I'm sorry (crying).

It wasn't officially linked in the investigation, and so at the time I didn't think anything of it.

MS. FOSTER: Excuse me. Do you need a tissue?

JUROR SEAT #3: I'm sorry.

MS. FOSTER: That's okay.

MR. BRAMBLE: That's all right.

JUROR SEAT #3: I didn't think that bothered me, but it's -- so they caught an arsonist, but it wasn't officially linked to our fire. Ours was the first, and then the string started less than a month after that.

MR. BRAMBLE: Wasn't the gentleman tried -- I can't remember his name.

JUROR SEAT #3: Joseph McIntyre.

MR. BRAMBLE: He was eventually caught.

JUROR SEAT #3: (Nods head affirmatively). But ours was very -- ours was first. He was in a different location.

MR. BRAMBLE: Okay.

JUROR SEAT #3: And because of a sense of fear, I

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found that it is hard because I can't say, "Yes, they did catch him."

MR. BRAMBLE: I see what you're saying.

Are you upset with the police because they couldn't link it to your --

JUROR SEAT #3: Umm, no. I don't have an axe to grind, but I was frustrated. I mean, when someone burns your house down, you're busy, and I think we saw him as we left -- as we fled the home. I sent in a description and we didn't hear back. And then when he was caught, I mean, it's vague, it was a wide, you know, tens of thousands of young men could have fit my description of the guy I saw and trace it back to the address it happened to. We never heard back. You know what I'm saying? It was a frustration thing.

MR. BRAMBLE: Did your entire house burn down?

JUROR SEAT #3: Well, I mean, we lost everything.

MR. BRAMBLE: You lost everything.

JUROR SEAT #3: I have an axe to grind with the township, but not the police.

MR. BRAMBLE: Okay. Again, I just don't want you taking it out on me or my police officers. It doesn't sound like that's the case with you.

JUROR SEAT #3: No, no. It was just -- yeah.

MR. BRAMBLE: Mr. Miller, you indicated you'd been the victim of a crime.

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JUROR SEAT #4: When I was 16-years-old my car was

broken into.

MR. BRAMBLE: It shouldn't affect your ability to sit here?

JUROR SEAT #4: No.

MR. BRAMBLE: All right. Anyone else in the back row been the victim of a crime?

In the front row, Ms. Rowland.

JUROR SEAT #12: Assault.

MR. BRAMBLE: Was this involved in the same incident your husband was?

JUROR SEAT #12: Correct.

MR. BRAMBLE: Did you feel the police handled it okay?

JUROR SEAT #12: Yes.

MR. BRAMBLE: Okay. You don't have any concerns about that?

JUROR SEAT #12: No, sir.

MR. BRAMBLE: The Judge is going to instruct you that there are two types of evidence, direct evidence and circumstantial evidence.

Now, direct evidence is if you're outside and you watch the thunder and the lightning, you see rain coming down, you're getting wet, you're outside, and you can see. But I'll start with Mr. Bogert.

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If you can look through those windows, and let's say they're thin windows, and you see what looks like lightning and you hear what sounds like thunder. People come in carrying umbrellas, and they look like they have raindrops on them. What would the -- inference would you draw from that information?

JUROR SEAT #1: It's raining.

MR. BRAMBLE: It's raining. Do you understand that circumstantial evidence is just as -- it can be just as powerful, sometimes even more powerful, than direct evidence.

JUROR SEAT #1: Um-hmm (affirmatively).

MR. BRAMBLE: The Judge will instruct you that you can use circumstantial evidence. Will you just follow the Judge's instruction?

JUROR SEAT #1: Yes.

MR. BRAMBLE: Ms. Stahle, would you agree with that, as well?

JUROR SEAT #2: Yes.

MR. BRAMBLE: Ms. Hodgson?

JUROR SEAT #3: Yes.

MR. BRAMBLE: Mr. Miller?

JUROR SEAT #4: Yes.

MR. BRAMBLE: Ms. Muhammad?

JUROR SEAT #5: Yes.

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MR. BRAMBLE: Mr. VanEss?

JUROR SEAT #6: Yes, sir.

MR. BRAMBLE: Ms. Ingersoll?

JUROR SEAT #7: Yes.

MR. BRAMBLE: Would everyone in the front row agree with that, as well.

THE JURY: (Responds affirmatively)

MR. BRAMBLE: The Judge is going to instruct you that you, if you remain seated on this panel, will be the judge or determine the credibility of witnesses. You -- let me start with you, Ms. Daniels. Do you work? Do you have a job.

JUROR SEAT #8: Yes.

MR. BRAMBLE: Where do you work.

JUROR SEAT #8: Goodwill.

MR. BRAMBLE: And could I ask you either, whether it be in your work or your just your day-to-day life, do you think you determine and judge whether or not people are being straight with you; honest with you?

JUROR SEAT #8: Yes.

MR. BRAMBLE: Okay. And do you understand that may be part of the process here?

JUROR SEAT #8: Yes.

MR. BRAMBLE: Okay. And you feel you can do that in this setting?

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JUROR SEAT #8: Yes.

MR. BRAMBLE: Ms. Roberts, would you agree with that?

JUROR SEAT #9: Yes.

MR. BRAMBLE: All right.

How about you, Ms. Wilcox?

JUROR SEAT #10: Yes.

MR. BRAMBLE: Mr. Siegel?

JUROR SEAT #11: Yep.

MR. BRAMBLE: Ms. Rowland?

JUROR SEAT #12: Yes, sir.

MR. BRAMBLE: Ms. Slagle, would you agree with that?

JUROR SEAT #13: Yeah, I think so.

MR. BRAMBLE: Okay. How about you, Mr. Libriani?

JUROR SEAT #14: Yes.

MR. BRAMBLE: Everyone in the back row agree with that, as well?

THE JURY: (Responds affirmatively)

MR. BRAMBLE: With this -- I'll start with you, Ms. Ingersoll -- with this idea of judging or determining the credibility of witnesses, do you understand there may come a point in the trial where one -- when there's evidence of people saying one thing happened and another person saying it didn't happen and, you know, the easy thing to do

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would be to throw up your hands and say you can't -- you can't decide. You go back and dig a little deeper.

than that and determine who's being straight with you and who's being honest with you. Would you agree with that?

JUROR SEAT #7: Yes.

MR. BRAMBLE: Do you feel you can do that in this setting?

JUROR SEAT #7: Yes.

MR. BRAMBLE: Does everyone feel they could do that?

THE JURY: Yes, sir (collectively).

MR. BRAMBLE: Okay. I won't get into a whole bunch -- you know the charges, and they're unarmed robbery, false impersonation of a police officer, false imprisonment or unlawful imprisonment.

The allegations are that the defendant did this. But I'd like to tell you a little bit about what you're going to hear. There was the two gentlemen that are involved, Mr. Isaacson and Mr. Gray, were driving after responding to an ad -- I think it's a bogus ad that the defendant put up, but an ad -- for a massage for adult services. I think they're both going to be candid with you and tell you that's why they were going there when the defendant met up with them.

Anyone say, "Geez, just because they were going to

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this massage or adult services, that they deserve to be robbed or deserved to have their money stolen"? Anyone feel that way?

THE JURY: (Responds negatively)

MR. BRAMBLE: Okay. The Judge will instruct you that sympathy or prejudice shouldn't enter into your deliberation process. I'll ask you this as a group. Does everyone agree to follow that instruction?

THE JURY: (Responds affirmatively)

MR. BRAMBLE: Okay. The Judge will also instruct you that penalty -- if the defendant is convicted -- is left up to the Judge and not anyone else. You don't let that enter into your deliberation process, the thought of a penalty or repercussions from this. Does everyone understand that?

THE JURY: (Responds affirmatively)

MR. BRAMBLE: Everyone agree to follow that instruction?

THE JURY: (Responds affirmatively)

MR. BRAMBLE: Okay. The Judge will also instruct you that I have the burden of proof here. That burden of proof is beyond a reasonable doubt.

Mr. Bogert, do you understand that that is not -- it's beyond a reasonable doubt and it's the instruction that's been used in every criminal case in this country.

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Do you understand that?

JUROR SEAT #1: Yes.

MR. BRAMBLE: Do you understand, as well, that it's not beyond a shadow of a doubt or beyond all doubt or to a mathematical certainty, or anything of that nature; it's simply beyond a reasonable doubt?

JUROR SEAT #1: Yep.

MR. BRAMBLE: You agree to follow that instruction?

JUROR SEAT #1: Yes, sir.

MR. BRAMBLE: Ms. Stahle, would you agree with that?

JUROR SEAT #2: Yes. Yes.

MR. BRAMBLE: Ms. Hodgson, would you agree to follow that?

JUROR SEAT #3: Yes.

MR. BRAMBLE: Mr. Miller?

JUROR SEAT #4: Yes.

MR. BRAMBLE: Ms. Muhammad?

JUROR SEAT #5: Yes.

MR. BRAMBLE: Mr. VanEssen?

JUROR SEAT #6: Yes, sir.

MR. BRAMBLE: Ms. Ingersoll?

JUROR SEAT #7: Yes.

MR. BRAMBLE: Ms. Daniels, would you agree to

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follow that instruction?

JUROR SEAT #8: Yes, sir.

MR. BRAMBLE: All right.

I'm going to put you on the spot here. I don't know how else to do this.

Ms. Daniels, do you understand that you're an African-American woman?

JUROR SEAT #8: Yes.

MR. BRAMBLE: And race, prejudice, things of that nature shouldn't enter into this. Would you agree with that?

JUROR SEAT #8: Yes, sir.

MR. BRAMBLE: And whether he's guilty or not is whether or not the facts show he's guilty. You would agree with that?

JUROR SEAT #8: I agree.

MR. BRAMBLE: If I prove beyond a reasonable doubt that the defendant is guilty, what would your verdict be?

JUROR SEAT #8: Same as yours.

MR. BRAMBLE: Would you have a problem making that finding?

JUROR SEAT #8: If he's proven to be guilty, he's guilty.

MR. BRAMBLE: Okay. My point is you wouldn't hold me to a higher standard of proof here than beyond a

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reasonable doubt?

JUROR SEAT #14: No, sir.

MR. BRAMBLE: Okay. Knowing a little bit more about the case, can anyone think of any reason they couldn't sit as a fair and impartial juror? Okay.

Mr. Libriani, am I pronouncing your name right?

JUROR SEAT #14: Libriani.

MR. BRAMBLE: Libriani. Sorry if I'm mispronouncing that.

JUROR SEAT #14: No problem.

MR. BRAMBLE: Would you agree you were either born with some common sense or we develop it along the way?

JUROR SEAT #14: Yeah.

MR. BRAMBLE: Hopefully, you develop it as you grow older.

JUROR SEAT #14: Right. Yes.

MR. BRAMBLE: And some people develop more common sense than others?

JUROR SEAT #14: Yeah.

MR. BRAMBLE: Do you understand that, even though this is kind of a sterile process, that you don't set your common sense outside the door when you go back inside to deliberate. Do you understand that?

JUROR SEAT #14: Yes.

MR. BRAMBLE: Okay. And will you agree to use

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your common sense in looking at all the facts?

JUROR SEAT #14: Yes.

MR. BRAMBLE: Ms. Rowland, would you agree with that?

JUROR SEAT #12: Yes, sir.

MR. BRAMBLE: Does everyone agree with that; that you're going to use your common sense in looking at the facts here?

THE JURY: (Responds affirmatively)

MR. BRAMBLE: Thank you. Your Honor, I don't think I have anything further here.

THE COURT: Ms. Foster.

MS. FOSTER: Thank you, Judge.

Good morning, ladies and gentlemen.

THE JURY: Good morning (collectively).

MS. FOSTER: Now, I usually don't start off by discussing bias. But since Mr. Bramble opened the door to one juror, I guess I feel I need to question any of the other jurors about this. It's something I usually ask in a trial anyway, but not usually something I ask coming out of the gate.

As you can see, I'm African-American and my client is African-American. Both the alleged victims are Caucasian. I was in the Marine Corp. for eight years. I have a very thick skin. My client is entitled to a fair

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1 trial. That's just what he's entitled to. Is there anybody
2 who feels that, based on personal prejudices -- don't worry
3 about offending me because I would be more offended if you
4 kept your mouth shut and went back there and during
5 deliberations say "he's black, he had to do it, he has to be
6 guilty." Does anybody feel that, based on race or anything
7 else, any other type of bias, you don't like guys who wear
8 whatever color tie that happens to be, whatever, that's
9 going to cause you not to be a fair and impartial juror,
10 based on a bias, does anybody feel like they cannot do this
11 job, take on this role as a juror? Anyone?
12 THE JURY: (Responds negatively)
13 MS. FOSTER: Thank you. Now you're going to hear
14 testimony from some police officers. I know some of you, a
15 number of you, have indicated you know police officers or
16 have family members who are police officers. Maybe some of
17 you know them pretty intimately.
18 Does anybody feel that police officers are --
19 their testimony is, say, more sacred than a lumberjack? In
20 other words, when a police officer takes the stand and
21 testifies, are you going to consider everything he says as
22 truth without any fallacies or any flaws? Anybody believe
23 police officers are just -- rank up there -- in terms of
24 their credibility -- with priests, ministers, whatever? In
25 other words, you're all comfortable that a police officer is

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1 capable of being incorrect or even lying like anybody else?
2 Is everybody comfortable with that?
3 JUROR SEAT #6: Well, I can't agree with that.
4 MS. FOSTER: Why can't you agree with that, sir?
5 JUROR SEAT #6: I can't say a police officer would
6 necessarily stand up there and lie.
7 MS. FOSTER: Okay. So -- so let's probe into
8 that. Mr. VanEssen -- is that how you pronounce your name,
9 sir?
10 JUROR SEAT #6: Right.
11 MS. FOSTER: You indicated you know a few police
12 officers. You're not a retired police officer yourself, are
13 you?
14 JUROR SEAT #6: No.
15 MS. FOSTER: In your opinion, a police officer who
16 takes the stand, you feel that anything that come out of his
17 mouth is going to be the truth? Is that your -- basically
18 your feeling?
19 JUROR SEAT #6: Yes.
20 MS. FOSTER: So, if a police officer gets on the
21 stand and points to an individual and says, "He did it
22 because I believe so," that's good enough for you, even
23 though he wasn't there; he didn't witness anything?
24 JUROR SEAT #6: Well, no. I wouldn't agree with
25 that.

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1 MS. FOSTER: Okay. But you will agree that a
2 police officer -- that -- from -- you cannot come to the
3 conclusion that a police officer is capable of lying on the
4 stand; is that right?
5 JUROR SEAT #6: I don't think so, no.
6 MS. FOSTER: Okay. Do you think a police officer
7 is capable of being legitimately mistaken about something?
8 JUROR SEAT #6: Possible.
9 MS. FOSTER: Possible. Do you believe a police
10 officer is less likely to be mistaken than a lay person like
11 you or any of these other individuals on the panel who are
12 not police officers?
13 JUROR SEAT #6: No.
14 MS. FOSTER: I'm sorry, so that you believe that
15 they are just as likely to be mistaken as anybody as?
16 JUROR SEAT #6: They could.
17 MS. FOSTER: But you do believe that, unlike a lay
18 person, if they take the stand and raise their hand to take
19 an oath, under no circumstances will they lie?
20 JUROR SEAT #6: I hope not.
21 MS. FOSTER: Okay. You hope not. But you had
22 indicated that you don't believe police officers are capable
23 of lying under oath; is that a fair statement?
24 JUROR SEAT #6: True.
25 MS. FOSTER: Okay. Ms. Stahle?

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1 JUROR SEAT #2: Stahle.
2 MS. FOSTER: Stahle.
3 JUROR SEAT #2: Stahle.
4 MS. FOSTER: Stahle. Sorry about that.
5 Ms. Stahle, if I were to ask you -- my client's
6 name is Mr. Heath here -- if I were to ask you, "Is
7 Mr. Heath guilty or innocent right now," what would your
8 answer be?
9 JUROR SEAT #2: You can't tell right now. We
10 haven't heard the case.
11 MS. FOSTER: Okay. What about you, Ms. Slagle,
12 what would your answer be?
13 JUROR SEAT #13: We didn't hear anything.
14 MS. FOSTER: So if I were to say, "Is he guilty or
15 innocent," what would your answer be?
16 JUROR SEAT #13: I'd have to hear it first.
17 MS. FOSTER: You haven't heard anything, so what
18 would your answer be?
19 JUROR SEAT #13: Well, he's not guilty yet.
20 MS. FOSTER: That's right. In our system, we have
21 something called the presumption of innocence. So, if I ask
22 each and every one of you if my client is guilty of
23 anything, you can't say, could you, because you haven't
24 heard anything?
25 Does anybody have a problem on the notion that, if

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| <p>1 I were to ask each and every one of you right now, "Is my 2 client guilty or innocent, what would your answer have to 3 be? Or at least not guilty. What would your answer have to 4 be, Ms. Slagle?</p> <p>5 JUROR SEAT #13: Not guilty.</p> <p>6 MS. FOSTER: How about you, Mr. Siegel?</p> <p>7 JUROR SEAT #11: Not guilty.</p> <p>8 MS. FOSTER: Ms. Stahle?</p> <p>9 JUROR SEAT #2: Not guilty.</p> <p>10 MS. FOSTER: Ms. Daniels?</p> <p>11 JUROR SEAT #8: Not guilty.</p> <p>12 MS. FOSTER: Ms. Muhammad?</p> <p>13 JUROR SEAT #5: Not guilty.</p> <p>14 MS. FOSTER: How about you, Mr. VanEssen?</p> <p>15 JUROR SEAT #6: Not guilty.</p> <p>16 MS. FOSTER: Is everybody comfortable with that 17 notion? Are you -- are you all comfortable with the notion 18 that the burden is not on me to prove that he's innocent? 19 That's not my burden. In our system, the burden is on the 20 prosecutor to prove that he is guilty. I can sit over there 21 with my feet up on the chair -- I won't -- but, you know, 22 technically I could sit over there with my legs propped up 23 playing Angry Birds throughout this entire trial, and you 24 still have to be convinced beyond a reasonable doubt that he 25 did it, based on his burden, not on my burden. Is everybody</p> <p>45</p> | <p>1 a real problem with that?</p> <p>2 THE JURY: Responds negatively.</p> <p>3 MS. FOSTER: Okay. Does anybody have any 4 religious convictions that make it impossible for you to put 5 somebody else in judgment? Anyone? Okay.</p> <p>6 Now, you know it's coming, Craig. I'm going to 7 have to pick on you, bro. We know each because I deal with 8 him; we do pv's together. How many years have you been 9 doing this now?</p> <p>10 JUROR SEAT #4: August will be 14.</p> <p>11 MS. FOSTER: Okay. Yeah. We've both been around 12 a pretty long time. So you've seen a lot of probationers; 13 right?</p> <p>14 JUROR SEAT #4: Right.</p> <p>15 MS. FOSTER: You've seen -- you've run the gamut 16 on the kind of people that have come to you on probation. 17 JUROR SEAT #4: Right.</p> <p>18 MS. FOSTER: You honestly think -- I'm not saying 19 this to be facetious, because we know each other -- but do 20 you think you could put aside all the characters that you've 21 dealt with the last 14 years and sit -- do you actually know 22 this gentleman?</p> <p>23 JUROR SEAT #4: No, ma'am.</p> <p>24 MS. FOSTER: We'll make sure we get that clear. 25 Actually sit and listen to this case from a perspective of</p> <p>47</p> |
| <p>1 comfortable with that?</p> <p>2 THE JURY: (Responds affirmatively)</p> <p>3 MS. FOSTER: Don't worry, I won't play Angry 4 Birds. I don't even play it. My kid does, but I don't. 5 Okay. Moving along.</p> <p>6 You're going to get an instruction ad nauseam 7 about reasonable doubt. I believe Mr. Bramble kind of 8 touched upon it. And he wanted to give you the 9 prosecution's version, basically, that it's not absolute 10 doubt. But you have to understand it's more than -- if you 11 want to put a number equation on it, if this were a civil 12 case you would only have to be convinced 51 to 49 percent, 13 very kind of close there. I can't put a number on it, but 14 it's much lighter than 51 because we're not talking about 15 awarding monetary damages at the end of the day, we're 16 talking about a person's liberty. So, the burden is much 17 higher.</p> <p>18 Is everybody comfortable with you have to be 19 convinced beyond a reasonable doubt, putting together your 20 world -- your life experiences, common sense, the evidence 21 that you're going to be presented, and weigh all of these 22 things to come to a conclusion that you are convinced beyond 23 a reasonable doubt? Does anybody have a problem with that? 24 You'll get an instruction on exactly -- or at least 25 technically -- what reasonable doubt is. Does anybody have</p> <p>46</p> | <p>1 somebody who doesn't deal with convicted felons every day?</p> <p>2 JUROR SEAT #4: Yes. I have no problem with that.</p> <p>3 MS. FOSTER: Okay. Because you're not a district 4 court probation officer, you're a circuit court probation 5 officer. You deal with convicted felons?</p> <p>6 JUROR SEAT #4: Correct.</p> <p>7 MS. FOSTER: Okay. And I'm sure you visit houses, 8 you -- you have to get into their personal lives. Because 9 we know each other, you've dealt with people who have 10 violated probation. You've been in front of this judge, 11 every judge in this building, every circuit court judge in 12 this building with people who have done everything from 13 re-offending to not reporting, to not paying fines, to 14 slapping their wives around, everything?</p> <p>15 JUROR SEAT #4: Yes.</p> <p>16 MS. FOSTER: And you're able to put all that aside 17 and judge this case fairly and impartially?</p> <p>18 JUROR SEAT #4: Yes.</p> <p>19 MS. FOSTER: Excuse me. Just to interject here, 20 Mr. Miller it says you have some -- you live in the City of 21 Wyoming, but you have no connection with the City of 22 Wyoming; is that correct?</p> <p>23 JUROR SEAT #4: As far as?</p> <p>24 THE COURT: Well, I'm just reading here. 25 Security, law enforcement -- Wyoming. I assume that Wyoming</p> <p>48</p> |

1 is in there as your city of residence, not connected with
2 your case, right?
3 JUROR SEAT #4: Correct.
4 MS. FOSTER: You work with the state?
5 JUROR SEAT #4: I work for the State of Michigan.
6 THE COURT: Very good.
7 JUROR SEAT #4: I live in Wyoming, 62A District.
8 MS. FOSTER: Thanks for bring that up, Judge.
9 You will hear that -- and I think you probably already
10 figured out that these two allegations arise out of Wyoming.
11 JUROR SEAT #4: Correct.
12 MS. FOSTER: I'm sorry. Yeah, Wyoming, yeah. I
13 remember because we -- yep. Is that going to be a problem
14 for you?
15 JUROR SEAT #4: No, ma'am.
16 MS. FOSTER: Okay. Anybody else live in Wyoming?
17 JUROR SEAT #6: Yes.
18 MS. FOSTER: You live in Wyoming, as well? Did
19 you indicate you knew some of the gentlemen whose names were
20 called?
21 JUROR SEAT #6: Well, police officers.
22 MS. FOSTER: That's what I meant, some of the
23 police officers. Okay. Is the fact that you live in
24 Wyoming going to be a problem for you and -- because now
25 you'd already indicated you tend to put a police officer on

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1 a higher plain. Now we're talking about the city in which
2 you reside, okay?
3 JUROR SEAT #6: (Nods head affirmatively)
4 MS. FOSTER: Is that going to be a problem for
5 you?
6 JUROR SEAT #6: No.
7 MS. FOSTER: No. What about you, Ms. Daniels?
8 JUROR SEAT #8: No, ma'am.
9 MS. FOSTER: Okay. This is your last out, folks.
10 Anybody feel like there's any -- any reason that you can
11 come up with that you cannot do this?
12 JUROR SEAT #3: (Raising hand)
13 MS. FOSTER: Yes?
14 JUROR SEAT #3: I'm sorry. I didn't know the
15 appropriate time. I have a scheduling conflict.
16 MS. FOSTER: Okay. What's your scheduling
17 conflict, ma'am?
18 JUROR SEAT #3: Well, I home school my youngest
19 and something changed. Today she has this big presentation.
20 I was able to get my husband to get her there. It would be
21 really great if I could -- if I would be -- I really would
22 like to not miss it.
23 MS. FOSTER: Okay. That's today?
24 JUROR SEAT #3: That's today.
25 MS. FOSTER: This afternoon?

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1 JUROR SEAT #3: It's right now.
2 MS. FOSTER: I'm not missing it, okay.
3 JUROR SEAT #3: That's my -- I know, I'm sorry I
4 didn't bring that up.
5 THE COURT: Well, is it too late?
6 JUROR SEAT #3: It's not too late.
7 MS. FOSTER: I don't have any objection, your
8 Honor. I mean I understand that.
9 THE COURT: I'll excuse you right now.
10 JUROR SEAT #3: Okay. Thank you very much.
11 (At 10:13 a.m., juror excused)
12 THE COURT: Thank you.
13 MS. FOSTER: Mr. Bogert, in your questionnaire it
14 says you're self employed. Is this going to be a financial
15 detriment to you?
16 JUROR SEAT #1: It kind of is, yes.
17 MS. FOSTER: What do you do, sir?
18 JUROR SEAT #1: Flooring. I subcontract. I've
19 had jobs scheduled this whole week that I've had to cancel.
20 Today I missed a huge day at work.
21 MS. FOSTER: This is going to go all day today and
22 potentially all day Thursday. Do you think that's going to
23 be a major financial hardship for you?
24 JUROR SEAT #1: It definitely is.
25 MS. FOSTER: Judge.

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1 THE COURT: Do I have a motion?
2 MS. FOSTER: I was going to ask for -- I know it
3 doesn't really fall under the parameters of cause, but I
4 hate to see a man lose his livelihood. And I wouldn't have
5 any objection if the Court would be willing to excuse him.
6 THE COURT: Mr. Bramble, any position?
7 MR. BRAMBLE: I'll leave it up to the Court.
8 THE COURT: I'm going to deny a challenge for
9 cause on that. It's not uncommon for jurors to have
10 employment obligations and suffer some financial hardship.
11 So, I'll deny a challenge for cause.
12 MS. FOSTER: Okay. With that, your Honor, I have
13 nothing further.
14 THE COURT: All right. We need to seat a juror in
15 Seat Number 3.
16 THE CLERK: Number 24, Jeffrey Pitchure.
17 THE COURT: I'll go with you, Mr. Bramble.
18 MR. BRAMBLE: All right.
19 THE COURT: You're questioning first.
20 MR. BRAMBLE: Is it Pitchure?
21 JUROR SEAT #3: Yes, Pitchure.
22 MR. BRAMBLE: Mr. Pitchure, were you able to hear
23 all the questions I asked?
24 JUROR SEAT #3: Yeah.
25 MR. BRAMBLE: Any of them that would have caused

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1 you to respond now that you're sitting --- here?
2 JUROR SEAT #3: I do know the police
3 officers.
4 MR. BRAMBLE: What departments do they work for?
5 JUROR SEAT #3: City of Walker.
6 MR. BRAMBLE: How well do you know them?
7 JUROR SEAT #3: Went to high school with them.
8 MR. BRAMBLE: Do you see them very often?
9 JUROR SEAT #3: On occasion in passing.
10 MR. BRAMBLE: Do you discuss their work with them
11 that much?
12 JUROR SEAT #3: No.
13 MR. BRAMBLE: Anything about that that would
14 prevent you from sitting as a fair and impartial juror?
15 JUROR SEAT #3: No.
16 MR. BRAMBLE: You heard me discuss with the fellow
17 -- your fellow jurors that the two victims in this case were
18 going to solicit massage or adult services, or things of
19 this nature. I think they were set up, basically, because I
20 don't think that even existed. But do you understand that
21 -- would that cause you to say, "Geez, they got what they
22 deserved"?
23 JUROR SEAT #3: No.
24 MR. BRAMBLE: Okay. Can you simply follow the
25 Judge's instructions, regardless of why they may have been

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1 going to the area of Burlingame?
2 JUROR SEAT #3: Sure.
3 MR. BRAMBLE: Okay. By now you kind of know what
4 we're looking for. Is there any reason you couldn't sit as
5 a fair and impartial juror?
6 JUROR SEAT #3: That I couldn't?
7 MR. BRAMBLE: Yeah, that you cannot.
8 JUROR SEAT #3: No.
9 MR. BRAMBLE: Nothing further at this time, your
10 Honor.
11 THE COURT: Ms. Foster?
12 MS. FOSTER: Good morning, sir.
13 JUROR SEAT #3: Good morning.
14 MS. FOSTER: Any of the questions that I asked
15 that you would have responded affirmatively regarding -- I
16 think you had already answered a question about police
17 officers, so we won't go there. But any religious
18 convictions, any biases that might come into play here?
19 JUROR SEAT #3: No.
20 MS. FOSTER: Do you understand the burden of proof
21 is on the prosecution, and you're okay with that?
22 JUROR SEAT #3: Yep.
23 MS. FOSTER: Have you ever served on a jury
24 before.
25 JUROR SEAT #3: Yes.

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1 MS. FOSTER: When.
2 JUROR SEAT #3: About two years ago, a little over
3 two years ago.
4 MS. FOSTER: Was it in this Court or a different
5 court?
6 JUROR SEAT #3: This Court.
7 MS. FOSTER: District court or circuit court?
8 JUROR SEAT #3: District.
9 MS. FOSTER: District. Was it a criminal matter
10 or civil matter?
11 JUROR SEAT #3: Criminal.
12 MS. FOSTER: Do you remember what the charge was?
13 JUROR SEAT #3: Sexual contact with a minor.
14 MS. FOSTER: Okay. This obviously has nothing to
15 do with that.
16 Was your overall experience in that process --
17 were you okay with it, did you have a good take away from
18 it?
19 JUROR SEAT #3: Yeah. Yeah.
20 MS. FOSTER: Did you actually deliberate?
21 JUROR SEAT #3: Yes.
22 MS. FOSTER: Okay. Were you -- are you able to
23 separate that experience from this one?
24 JUROR SEAT #3: Sure.
25 MS. FOSTER: Okay. I don't think I have anything

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1 further. Thank you, sir.
2 THE COURT: Mr. Bramble, any challenges for cause?
3 MR. BRAMBLE: No, your Honor.
4 THE COURT: Ms. Foster, any challenges for cause?
5 MS. FOSTER: No, your Honor.
6 THE COURT: All right. Back to you, Mr. Bramble.
7 And each one of you can exercise peremptories one at a time
8 or more than one. First, Mr. Bramble.
9 MR. BRAMBLE: I would thank and excuse Juror
10 Number 2, in Seat 13, Ms. Slagle, and Juror Number 28, Seat
11 8, Ms. Daniels.
12 THE COURT: All right. Ms. Slagle, Ms. Daniels,
13 you two are excused. Thank you.
14 (At 10:19 a.m., jurors excused)
15 MS. FOSTER: You have to get your capsules into --
16 you have to get your capsules.
17 THE CLERK: Number 37, Loretta Durkin.
18 THE COURT: Take the seat furthest in, Seat
19 Number 8.
20 THE CLERK: Number 38, Dana Young.
21 THE COURT: Mr. Bramble?
22 MR. BRAMBLE: Thank you.
23 Miss Durkin, I'm going to direct my questions to
24 you and Mr. Young. Were you able to hear all the questions
25 I asked?

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JUROR SEAT #8: Yes.

MR. BRAMBLE: Any of them cause you to respond now that you're seated here in the jury box?

JUROR SEAT #8: My sister is a deputy in San Diego and my brother-in-law is a deputy in San Diego.

MR. BRAMBLE: Do you discuss work with them that much?

JUROR SEAT #8: With my sister, some. But she does a lot of undercover casino and FBI things.

MR. BRAMBLE: Anything about that that would prevent you from sitting here as a fair and impartial juror?

JUROR SEAT #8: No.

MR. BRAMBLE: You heard me talk about judging and determining the credibility of witnesses. Do you feel you can do that in this setting?

JUROR SEAT #8: Yes.

MR. BRAMBLE: Do you think you do that in your day-to-day life?

JUROR SEAT #8: Yes.

MR. BRAMBLE: Okay. Do you feel you could do that here?

JUROR SEAT #8: Yes.

MR. BRAMBLE: You agree to use your common sense, too, in looking at the facts?

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JUROR SEAT #8: Yes.

MR. BRAMBLE: All right. Mr. Young, were you able to hear all the questions I asked?

JUROR SEAT #13: Yes.

MR. BRAMBLE: Any of them that would have caused you to respond now that you're seated here in the jury box?

JUROR SEAT #13: No.

MR. BRAMBLE: Do you know any police officers?

JUROR SEAT #13: Officer Tom Bush, City of Grand Rapids.

MR. BRAMBLE: Grand Rapids. Do you discuss his work with him very much?

JUROR SEAT #13: About ten years ago. Not since.

MR. BRAMBLE: When was the last time you saw him?

JUROR SEAT #13: About a year-and-a-half ago.

MR. BRAMBLE: Anything about that that would prevent you from sitting here as a fair and impartial juror?

JUROR SEAT #13: No.

MR. BRAMBLE: I discussed with the fellow jurors, the two victims here were going to -- I believe they were going to respond to an ad for a massage or adult services, things of that nature. Does it cause you to say, "Well, geez, if they were going to do that, they deserve to get robbed, they deserved to get set up"?

JUROR SEAT #13: No.

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MR. BRAMBLE: I don't think I have anything

THE COURT: Ms. Foster?

MS. FOSTER: Thank you, sir.

Good morning Ms. Durkin and Mr. Young.

Ms. Durkin, you indicated in your questionnaire you testified before a grand jury?

JUROR SEAT #8: Yes.

MS. FOSTER: Was it -- where was that?

JUROR SEAT #8: At the federal building.

MS. FOSTER: Okay. I don't want to get too much into it, but I will ask you this. Did that experience -- would that experience, would it have any bearing on your ability to be a fair and impartial juror in this?

JUROR SEAT #8: I don't think so. I have been contacted again. So I don't know if that is still -- they said they'd contact me if I had to testify in front of -- for a trial, and I haven't been contacted.

MS. FOSTER: Are you a witness or --

JUROR SEAT #8: I would be a victim.

MS. FOSTER: You would be a victim, okay, in a federal case?

JUROR SEAT #8: Yes.

MS. FOSTER: If you don't mind my asking, what does it involve?

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JUROR SEAT #8: I don't know the official charges were; fraud. I had quite a bit of money that I lost.

MS. FOSTER: Okay. Do you feel that that -- this is still ongoing?

JUROR SEAT #8: As far as I know. I haven't heard if they settled anything.

MS. FOSTER: Okay. How long ago was this that this happened?

JUROR SEAT #8: It happened in '08, and I believe the charges -- they were doing a lot of investigation before they --

MS. FOSTER: It's the feds, and they are a little slow.

JUROR SEAT #8: Yeah. So I testified last year. I think it was August.

MS. FOSTER: Well, so this is something we -- you're a victim or alleged victim of this ongoing matter. And this is a matter that involves fraud, which is a -- basically a theft of money. You said a substantial amount of money?

JUROR SEAT #8: (Nods head affirmatively)

MS. FOSTER: Do you feel that because the allegation in this case involves, obviously, not substantial amount, but it does involve the allegation of a theft of money, do you think that that may prevent you from being a

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1 fair and impartial juror in a case like this?
 2 JUROR SEAT #8: I don't think so.
 3 MS. FOSTER: All right. If you don't mind, can
 4 you tell us why?

5 JUROR SEAT #8: I think I'm a pretty fair person
 6 in general.

7 MS. FOSTER: Okay.

8 JUROR SEAT #8: Which is why I probably lost a lot
 9 of money, because I believe people until they do something
 10 that makes me not believe them.

11 MS. FOSTER: Okay. Do you have any other biases
 12 or any concerns or anything that I should be concerned about
 13 in your ability to be a fair and impartial juror? In other
 14 words, you'd indicated you have siblings who are police
 15 officers?

16 JUROR SEAT #8: Um-hmm (affirmatively).

17 MS. FOSTER: Would that come into play in your
 18 ability to be a fair and impartial juror?

19 JUROR SEAT #8: No, I don't think so. I have --
 20 there's ten kids in our family. Several work for the
 21 county. I've had a couple brothers that have served time.
 22 So, we have a lot of color in our --

23 MS. FOSTER: An eclectic bunch.

24 JUROR SEAT #8: Yes.

25 MS. FOSTER: You understand that the whole notion

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1 of the presumption of innocence?

2 JUROR SEAT #8: Yes.

3 MS. FOSTER: You don't have any problem with that?

4 JUROR SEAT #8: No.

5 MS. FOSTER: You don't have any problem with the
 6 burden being on the prosecution, not on me?

7 JUROR SEAT #8: No.

8 MS. FOSTER: How about you, Mr. Young? Is there
 9 anything -- any of the questions that I asked, would you
 10 have raised your hand? Are there any red flags I should
 11 know about with regards to you?

12 JUROR SEAT #13: No.

13 MS. FOSTER: No axes to grind or anything like
 14 that?

15 JUROR SEAT #13: No.

16 MS. FOSTER: Okay. What do you do, sir?

17 JUROR SEAT #13: I'm an insurance adjuster.

18 MS. FOSTER: All right. Have you been the victim
 19 of a crime yourself or know somebody?

20 JUROR SEAT #13: No.

21 MS. FOSTER: I'm sure everybody knows somebody who
 22 has been a victim of a crime.

23 JUROR SEAT #13: I know people, but I couldn't
 24 tell you their name right now because it's been such a long
 25 time.

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1 MS. FOSTER: Okay. Thank you.

2 THE COURT: All right. From here on out, if there

3 are any challenges for cause, I'll rely on respective

4 counsel to call that to my attention. I'll assume

5 everything from here on out are peremptory.

6 I'll go to you, Ms. Foster.

7 MS. FOSTER: Your Honor, I'm going to exercise
 8 three peremptory challenges at this time.

9 THE COURT: Very good.

10 MS. FOSTER: I want to thank and excuse the juror
 11 in Seat Number 2.

12 THE COURT: Okay.

13 MS. FOSTER: That would be Ms. Stahle.

14 THE COURT: All right.

15 MS. FOSTER: No offense, but I have to thank and
 16 excuse the juror in Seat Number 4.

17 THE COURT: Mr. Miller, you are excused, also.

18 MS. FOSTER: And I have to thank and excuse the
 19 juror in Seat Number 6.

20 THE COURT: Mr. VanEssen, you are excused, also.
 21 (At 10:28 a.m. jurors excused)

22 THE CLERK: Number 32, John Piela.

23 THE COURT: Sit in Seat Number 2, please.

24 THE CLERK: Number 3, James Bolden.

25 THE COURT: Seat 4.

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1 THE CLERK: Number 19, Jason Fuller.

2 THE COURT: Ms. Foster, go ahead, please.

3 MS. FOSTER: Thank you, Judge. We're still in
 4 morning, folks. Okay, good morning.

5 Is it Piela?

6 JUROR SEAT #2: Piela.

7 MS. FOSTER: That's what I thought. Good morning,
 8 Mr. Piela. You heard the questions asked by myself and
 9 Mr. Bramble this morning. Is there anything that we should
 10 know about you that may cause you to either cause
 11 Mr. Bramble some concern or me some concern with regards to
 12 your ability to be a fair and impartial juror?

13 JUROR SEAT #2: No, ma'am.

14 MS. FOSTER: What do you do for a living, sir?

15 JUROR SEAT #2: Construction.

16 MS. FOSTER: Construction. Are you self-employed,
 17 as well?

18 JUROR SEAT #2: No.

19 MS. FOSTER: You work with a company?

20 JUROR SEAT #2: Yes.

21 MS. FOSTER: All right. HVAC. Okay, is that
 22 where you work?

23 JUROR SEAT #2: Yes.

24 MS. FOSTER: Do you know any police officers?

25 JUROR SEAT #2: An acquaintance with one, Kent

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1 County.
2 MS. FOSTER: Okay. You're a juror or
3 acquaintanceship, is that going to come into play?
4 JUROR SEAT #2: Our kids go to the same school.
5 Socially, not professionally.
6 MS. FOSTER: You don't drink with these guys,
7 shoot pool with these guys, anything like that?
8 JUROR SEAT #2: No.
9 MS. FOSTER: Anything else? What about your
10 understanding of the presumption of innocence? You're okay
11 with that?
12 JUROR SEAT #2: (Nods head affirmatively)
13 MS. FOSTER: The burden is on the prosecution.
14 JUROR SEAT #2: (Nods head affirmatively)
15 MS. FOSTER: That you'll hold him to his standard
16 of beyond a reasonable doubt, not just, "Well, he probably
17 did it, so he did it" kind of a thing?
18 JUROR SEAT #2: Yes.
19 MS. FOSTER: Okay. Mr. Fuller, what are you
20 reading there? I saw you come up with a book.
21 JUROR SEAT #6: Catching Fire.
22 MS. FOSTER: Catching -- can I see it?
23 JUROR SEAT #6: Yeah.
24 MS. FOSTER: Catching Fire. Is that part of the
25 Hunger Game series?

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1 JUROR SEAT #6: Yes.
2 MS. FOSTER: I heard it's really good. I would
3 like to read the books before I see the movie.
4 JUROR SEAT #6: Yes.
5 MS. FOSTER: I hear it's really good.
6 JUROR SEAT #6: It is very good.
7 MS. FOSTER: What about the questions that
8 Mr. Bramble and I asked the other jurors? Is there anything
9 about you we should know?
10 JUROR SEAT #6: No.
11 MS. FOSTER: How about, do you know any police
12 officers?
13 JUROR SEAT #6: No.
14 MS. FOSTER: You look pretty young. You've
15 probably never served on a jury before?
16 JUROR SEAT #6: No.
17 MS. FOSTER: Okay. Oh, you're not that young; you
18 just have a baby face. Well, you are young, but you're not
19 18. I thought maybe you were 18-years-old.
20 So, but it does indicate that -- do you live in
21 Wyoming?
22 JUROR SEAT #6: I do.
23 MS. FOSTER: Is the fact that these allegations
24 take place in Wyoming, is that going to be any cause of
25 concern for you?

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1 JUROR SEAT #6: No.
2 MS. FOSTER: Okay. Is there any reason why you
3 feel you cannot be a fair and impartial juror in this case?
4 JUROR SEAT #6: No.
5 MS. FOSTER: Okay. Thank you very much.
6 MR. BRAMBLE: (Conferring with defense counsel)
7 MS. FOSTER: I'm sorry. Mr. Bolden, I missed you,
8 bro. What's up?
9 JUROR SEAT #4: Yes.
10 MS. FOSTER: Mr. Bramble had to just quietly --
11 how are you, Mr. Bolden. You heard the questions I asked
12 the other individuals. Is there anything about you we
13 should know?
14 JUROR SEAT #4: No.
15 MS. FOSTER: Do you think you could be a fair and
16 impartial juror?
17 JUROR SEAT #4: Yes. I had a stroke so...
18 MS. FOSTER: Okay. That's the -- do you have any
19 hearing problems, any other deficits that may --
20 JUROR SEAT #4: No, nope.
21 MS. FOSTER: Okay. Do you know any people in law
22 enforcement?
23 JUROR SEAT #4: Used to.
24 MS. FOSTER: Okay.
25 JUROR SEAT #4: Hudsonville.

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1 MS. FOSTER: Okay.
2 JUROR SEAT #4: I -- all of them were Hudsonville
3 police officers.
4 MS. FOSTER: You know a lot of Hudsonville police
5 officers?
6 JUROR SEAT #4: There's five or six Hudsonville
7 police officers.
8 MS. FOSTER: You know them all?
9 JUROR SEAT #4: This was 20 years ago.
10 MS. FOSTER: Okay. So that's not going to come
11 into play now?
12 JUROR SEAT #4: No.
13 MS. FOSTER: Okay. Any biases? Will any biases
14 come into play?
15 JUROR SEAT #4: No.
16 MS. FOSTER: You're not going to be friendlier
17 because everybody at this table is African-American?
18 JUROR SEAT #4: No.
19 MS. FOSTER: I would hope not, anymore than I hope
20 any of the Caucasians wouldn't be any friendlier with any of
21 the people over there.
22 I have nothing further. Thank you.
23 THE COURT: Mr. Bramble?
24 MR. BRAMBLE: Mr. Piela were you able to --
25 that's the pronunciation?

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JUROR SEAT #2: Yes.

questions I asked?

JUROR SEAT #2: Yes.

MR. BRAMBLE: Any of them that would have caused you to respond besides I think you indicated you knew a police officer?

JUROR SEAT #2: No.

MR. BRAMBLE: Anything else that you can think of?

JUROR SEAT #2: Just a little bit of a higher standard for a police officer maybe. It's not -- it is just the years of experience. They see stuff we don't because they've done it. It's not a whole set of higher standards, but it's just their career. I'd hope they wouldn't jeopardize it by --

MR. BRAMBLE: They might have special training that you and I don't have that causes them to be -- observe things differently. Would you agree with that?

JUROR SEAT #2: Absolutely.

MR. BRAMBLE: Okay. Mr. Bolden, were you able to hear all the questions I asked?

JUROR SEAT #4: Yes.

MR. BRAMBLE: Any of them cause you to respond?

JUROR SEAT #4: No.

MR. BRAMBLE: Okay. It indicates on your

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questionnaire form that you are retired.

JUROR SEAT #4: Yes.

MR. BRAMBLE: What did you retire from, if I could ask?

JUROR SEAT #4: Friendly Food Shops, a little -- right by Burger King and everything in Hudsonville. I was employed in Hudsonville.

MR. BRAMBLE: Okay. Who else do we have?

MS. FOSTER: Mr. Fuller.

MR. BRAMBLE: Mr. Fuller. I put you in the wrong box there. That's why I was having trouble finding you. I'm going to cross you out there.

Mr. Fuller, were you able to hear all the questions I asked?

JUROR SEAT #6: Yes.

MR. BRAMBLE: Any of them cause you to respond?

JUROR SEAT #6: No.

MR. BRAMBLE: Know anyone who's been accused, charged or convicted of a crime?

JUROR SEAT #6: No.

MR. BRAMBLE: Okay. By now you have to kind of know what we're looking for here. Anything you think you should tell myself or the defense counsel or the Judge?

JUROR SEAT #6: No.

MR. BRAMBLE: Okay. Thank you. Nothing further.

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THE COURT: Back to you, Mr. Bramble.

MR. BRAMBLE: I would thank you, excuse Juror

Number 16 in Seat 5, Ms. Muhammad.

THE COURT: Thank you very much. You are excused.

(At 10:36 a.m., juror excused)

THE CLERK: Number 14, Benjamin Masterson.

THE COURT: Mr. Bramble.

MR. BRAMBLE: Thank you. Mr. Masterson, were you able to hear all the questions I asked?

JUROR SEAT #5: Yes, sir.

MR. BRAMBLE: Any of them cause you to respond?

JUROR SEAT #5: Briefly just known some police officers, but nothing formal. Someone to say "Hi" to in the grocery store.

MR. BRAMBLE: Shouldn't affect your ability to sit here as a fair and impartial juror?

JUROR SEAT #5: No, sir.

MR. BRAMBLE: I lost my train of thought here. I discussed with your fellow jurors this idea of determining or judging the credibility of witnesses. Let me ask you this. What do you do for a living?

JUROR SEAT #5: Administrator at a hospital, Spectrum.

MR. BRAMBLE: Would it be in your work or in your day-to-day personal life? Do you agree that you determine

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and judge whether or not people are being candid, straight with you?

JUROR SEAT #5: Absolutely.

MR. BRAMBLE: Do you understand that may be part of the process here?

JUROR SEAT #5: Um-hmm (affirmatively).

MR. BRAMBLE: I discussed with a couple jurors this idea of one person says something happened and the other didn't. They are diametrically opposed. The easy thing would be to throw up your hands and say you can't decide. But your job is to dig a little deeper and determine what the facts are and apply those facts to the law.

JUROR SEAT #5: Um-hmm (affirmatively).

MR. BRAMBLE: Do you understand that?

JUROR SEAT #5: Absolutely.

MR. BRAMBLE: Again, just as I asked Mr. Fuller, by now you have to know what we're looking for here. Can you think of any reason you couldn't sit as a fair and impartial juror?

JUROR SEAT #5: No.

MR. BRAMBLE: Thank you.

THE COURT: Ms. Foster?

MS. FOSTER: Good morning, Mr. Masterson.

JUROR SEAT #5: Good morning.

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MS. FOSTER: You heard the questions I asked.

JUROR SEAT #5: Yes, ma'am.

MS. FOSTER: I will think we pretty much covered our bases. We're becoming repetitive at this point. Is there anything that I asked that would have caused you to raise your hand initially?

JUROR SEAT #5: No, ma'am.

MS. FOSTER: You indicated you could be a fair and impartial juror?

JUROR SEAT #5: Yes, ma'am.

MS. FOSTER: No biases, no prejudices?

JUROR SEAT #5: No, ma'am.

MS. FOSTER: No religious convictions?

JUROR SEAT #5: No.

MS. FOSTER: Police officers aren't above and beyond reproach?

JUROR SEAT #5: No.

MS. FOSTER: And no axes to grind, I'd imagine --

JUROR SEAT #5: No, ma'am.

MS. FOSTER: -- not working at Spectrum. Maybe not in this realm, maybe. Who knows.

Thank you, sir.

THE COURT: Back to you, Ms. Foster. Any further challenges?

MS. FOSTER: Not for cause, your Honor. Oh,

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that's right. You indicated we don't have any -- give me a second, your Honor.

THE COURT: Sure.

MS. FOSTER: (Confers with client and externs)

Your Honor, we'd like to thank and excuse the juror in Seat Number 1.

THE COURT: All right. Mr. Bogert, you are excused. Thank you very much.

(At 10:41 a.m., juror excused)

THE CLERK: Number 6, Mark MacFarlane.

THE COURT: Ms. Foster.

MS. FOSTER: Is it me, your Honor?

THE COURT: Yes.

MS. FOSTER: Sorry about that. Still in morning, aren't we? Yes, we are. MacFarlane?

JUROR SEAT #1: Yes, ma'am.

MS. FOSTER: I heard MacFerrell for some reason, and I'm not seeing it on this list.

Good morning, sir.

JUROR SEAT #1: Good morning.

MS. FOSTER: MacFarlane; correct, sir?

JUROR SEAT #1: Yes, it is.

MS. FOSTER: You heard my questions. You heard Mr. Bramble's questions. Is there anything we should know about you that -- is there anything about you that we should

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1 know that may be of either concern to myself or Mr. Bramble

2 with regards to your ability to be a fair and impartial

3 juror?

JUROR SEAT #1: No.

MS. FOSTER: Okay. Have you ever served on a jury before?

JUROR SEAT #1: No.

MS. FOSTER: Okay. You know anybody in law enforcement?

JUROR SEAT #1: Just one from high school. I don't see him at all.

MS. FOSTER: Okay. So they don't -- he doesn't swap war stories -- he or she doesn't swap war stories with you or not?

JUROR SEAT #1: No, no.

MS. FOSTER: Okay. Any particular bias or prejudice that may prevent you from being a fair and impartial juror?

JUROR SEAT #1: No.

MS. FOSTER: Know anybody who's been the victim of any kind of theft crime?

JUROR SEAT #1: No. Nobody that I really know.

MS. FOSTER: Do you -- you understand the whole presumption of innocence; reasonable doubt; burden of proof; any issue with any of those legal concepts?

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JUROR SEAT #1: No.

MS. FOSTER: Okay. All right.

Anything else that you want to share with us that may be of either concern to myself or Mr. Bramble?

JUROR SEAT #1: Nothing I know of.

MS. FOSTER: Nothing that you can think of? Okay. Thank you.

THE COURT: Mr. Bramble?

MR. BRAMBLE: Mr. MacFarlane, this is where I feel like I'm beating a dead horse. Can you think of anything that would prevent you from sitting here as a fair and impartial juror?

JUROR SEAT #1: No. I could be fair.

MR. BRAMBLE: I have nothing further, your Honor.

THE COURT: Mr. Bramble, any further challenges?

MR. BRAMBLE: Your Honor, the State is satisfied.

THE COURT: Ms. Foster?

MS. FOSTER: (Confers with client and extern) Defense is satisfied, your Honor.

THE COURT: Very good. Those of you remaining out there are excused. You can check out downstairs. Thank you.

(At 10:44 a.m., remainder of jury panel excused)

THE COURT: All right, ladies and gentlemen. I think you've already seen we have excellent attorneys here.

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1 They are very straightforward and to the point; very
 2 experienced. You will, I think, find both during this
 3 trial.
 4 We hope to move this along efficiently and
 5 certainly finish on Thursday at the latest.
 6 For now we're going to take a 15-minute recess.
 7 After that recess, you'll be sworn in. I'll give you
 8 preliminary instructions. You will be handed copies of
 9 those preliminary instructions and then we'll proceed with
 10 opening statements and the evidence in the case.
 11 I'll just caution you now, as I will repeatedly
 12 through this case, the only evidence, the only facts you may
 13 consider in this case will come to you while I, the
 14 attorneys, the defendant are all here. That will come to
 15 you through sworn testimony, exhibits, and anything else I
 16 tell you to consider as evidence. It's very important to
 17 consider only those things as evidence.
 18 Don't discuss the case in any way with anybody,
 19 including yourselves, until the end of the trial when you
 20 can deliberate. Don't have any contact with the attorneys,
 21 the defendant, or any witnesses, even if it has nothing to
 22 do with this case. Don't do any investigation or any
 23 experiments on your own.
 24 We'll take a 15-minute recess, and my clerk will
 25 take you back to the jury room back here.

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1 (At 10:47 a.m., break had)
 2 THE COURT: Anything further at this time,
 3 Mr. Bramble?
 4 MR. BRAMBLE: Nothing from the People.
 5 THE COURT: Ms. Foster?
 6 MS. FOSTER: Not from the defense, your Honor.
 7 THE COURT: All right. We're in recess.
 8 (At 10:48 a.m., break had)
 9 (At 11:15 a.m., jury resumes seats)
 10 THE COURT: Jurors remain standing, please. My
 11 clerk will swear you in. Others, you may be seated.
 12 MS. FOSTER: Thank you, sir.
 13 THE COURT: One little detail to cover with
 14 counsel here. You've received green sheets here that the
 15 jury has received. Any objection to the content of those
 16 instructions? I am assuming that each one of you has read
 17 through them thoroughly.
 18 Go ahead and swear in the jury.
 19 THE CLERK: Would you raise your right hand,
 20 please.
 21 Do you solemnly swear that in this action now
 22 before the court you will justly decide the questions
 23 submitted to you, and unless you are discharged by the Court
 24 from further deliberation, you will render a true verdict
 25 and that you will render your verdict only on the evidence

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1 introduced and in accordance with the instructions of the
 2 Court to help you.
 3 (At 11:16 a.m., jurors administered oath)
 4 THE JURY: (Responds affirmatively)
 5 THE COURT: Be seated.
 6 MS. FOSTER: The answer to that question is "Yes,"
 7 your Honor, we're satisfied with the preliminary jury
 8 instructions.
 9 MR. BRAMBLE: Likewise, your Honor.
 10 THE COURT: Ladies and gentlemen of the jury, you
 11 will be hearing the charges -- you can follow along on the
 12 green sheets as I read them, or you can listen to me, or
 13 both. That's your choice. I always reserve the right to
 14 edit what we have in here. I might change something, but it
 15 will be as to style and not content.
 16 You will be hearing charges filed in two separate
 17 cases. Because the alleged conduct of the defendant was
 18 very similar, you will decide both cases. The offenses
 19 alleged in Case No. 11-11910-FH involved the alleged victim,
 20 Barry Gordon Isaacson. The offenses alleged in Case
 21 No. 11-11911-FH involved the alleged victim, Brian James
 22 Gray.
 23 I'll now explain some of the legal principles you
 24 will need to know and procedure we will follow in this
 25 trial.

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1 First, the prosecutor makes an opening statement,
 2 where he gives his theories about the cases. The defense
 3 lawyer does not have to make an opening statement, but she
 4 may make an opening statement after the prosecutor makes
 5 his, or she may wait until later. These statements are not
 6 evidence. They are only meant to help you understand how
 7 each side views the cases.
 8 Next, the prosecutor presents his evidence. The
 9 prosecutor may call witnesses to testify and may show you
 10 exhibits like documents or objects. The defense lawyer has
 11 the right to cross-examine the prosecutor's witnesses.
 12 After the prosecutor has presented all his
 13 evidence, the defense attorney may also offer evidence, but
 14 does not have to. By law, the defendant does not have to
 15 prove his innocence or produce any evidence. If the defense
 16 does call any witnesses, the prosecutor has the right to
 17 cross-examine them. The prosecutor may also call witnesses
 18 to contradict the testimony of the defense witnesses.
 19 After all the evidence has been presented, the
 20 prosecutor and the defense lawyer will make their closing
 21 arguments. Like the opening statements, these are not
 22 evidence. They are only meant to help you understand the
 23 evidence and the way each side sees the cases. You must
 24 base your verdicts only on the evidence.
 25 You have been given a written copy of the

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1 instructions I'm reading to you. You may refer to them
2 during the trial. Since you are on the jury, the course of the
3 trial, these instructions may change at the end of the
4 trial. At the close of the trial, I will provide you with a
5 copy of my final instructions for your use during
6 deliberations.

7 My responsibilities as the judge in this trial are
8 to make sure that the trial is run fairly and efficiently,
9 to make decisions about evidence, and to instruct you about
10 the law that applies to these cases. You must take the law
11 as I give it to you. Nothing I say is meant to reflect my
12 own opinions about the facts of the cases. As jurors, you
13 are the ones who will decide these cases.

14 Your responsibility as jurors is to decide what
15 the facts of the cases are. This is your job, and no one
16 else's. You must think about all the evidence and all the
17 testimony, and then decide what each piece of evidence means
18 and how important you think it is. This includes how much
19 you believe what each of the witnesses said.

20 What you decide about any fact in these cases is
21 final.

22 When it is time for you to decide cases, you are
23 only allowed to consider the evidence that was admitted in
24 the cases. Evidence includes only the sworn testimony of
25 witnesses, the exhibits admitted into evidence, and anything

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1 else I tell you to consider as evidence.

2 It is your job to decide what the facts of these
3 cases are. You must decide which witnesses you believe and
4 how important you think their testimony is. You do not have
5 to accept or reject everything a witness says. You are free
6 to believe all, none, or part of any person's testimony.

7 In deciding which testimony you believe, you
8 should rely on your own common sense and everyday
9 experience. However, in deciding whether you believe a
10 witness's testimony, you must set aside any bias or
11 prejudice you have based on the race, gender, or national
12 origin of the witness.

13 There is no fixed set of rules for judging whether
14 you believe a witness, but it may help you to think about
15 these questions:

16 Was the witness able to see or hear clearly? How
17 long was the witness watching or listening? Was anything
18 else going on that might have distracted the witness?

19 Does the witness seem to have a good memory?

20 How does the witness look and act while
21 testifying? Does the witness seem to be making an honest
22 effort to tell the truth, or does the witness seem to evade
23 the questions or argue with the lawyers?

24 Does the witness's age or maturity affect how you
25 judge his or her testimony?

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1 Does the witness have any bias or prejudice or any
2 personal interest in these cases or the people in the cases?

3 Have there been any promises, threats,
4 suggestions, or other influences that affect how the witness
5 testifies?

6 In general, does the witness have any special
7 reason to tell the truth, or any special reason to lie?

8 All in all, how reasonable does the witness's
9 testimony seem when you think about all the other evidence
10 in the cases?

11 The questions the lawyers ask the witnesses are
12 not evidence. Only the answers are evidence. You should
13 not think that something is true just because one of the
14 lawyers asks questions that assume or suggest that it is.

15 I may ask some of the witnesses questions myself.
16 These questions are not meant to reflect my opinion about
17 the evidence. If I ask questions, my only reason would be
18 to ask about things that may not have been fully explored.

19 During the trial, the lawyers may object to
20 certain questions or statements made by the other lawyers or
21 witnesses. I will rule on these objections according to the
22 law. My rulings for or against one side or the other are
23 not meant to reflect my opinions about the facts in these
24 cases.

25 Sometimes the lawyers and I will have discussions

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1 out of your hearing. Also, while you are in the jury room,
2 I may have to take care of other matters that have nothing
3 to do with these cases. Pay no attention to these
4 interruptions.

5 You must not discuss these cases with anyone,
6 including your family or friends. You must not even discuss
7 them with the other jurors until the time comes for you to
8 decide the cases. When it is time for you to decide the
9 cases, I will send you to the jury room for that purpose.
10 Then you should discuss the cases among yourselves, but only
11 in the jury room and only when all the jurors are there.
12 When the trial is over, you may, if you wish, discuss the
13 cases with anyone.

14 If I call for a recess during the trial, I will
15 either send you back to the jury room or allow you to leave
16 the courtroom on your own and go about your business. But
17 you must not discuss the cases with anyone or let anyone
18 discuss them with you or in your presence. If someone tries
19 to do that, tell him or her to stop, and explain that as a
20 juror you are not allowed to discuss the cases. If he or
21 she continues, leave and report the incident to me as soon
22 as you return to court.

23 You must not talk to the defendant, the lawyers,
24 or the witnesses about anything at all, even if it has
25 nothing to do with the cases.

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|--|--|
| <p>1 It is very important that you only receive 2 information about the cases I read to you. If you are acting as 3 the jury and when the defendant, the lawyers, and I are all 4 here.</p> <p>5 During the trial, do not read, listen to, or watch 6 any news reports about the cases. Under the law, the 7 evidence you consider to decide cases must meet certain 8 standards. For example, witnesses must swear to tell the 9 truth, and the lawyers must be able to cross-examine them. 10 Because news reports do not have to meet these standards, 11 they could give you incorrect or misleading information that 12 might unfairly favor one side. So, to be fair to both 13 sides, you must follow this instruction.</p> <p>14 Before recesses I may or may not instruct you. 15 Remember, for the reasons I explained to you earlier, you 16 must not read, listen to, or watch any news reports about 17 these cases while you are serving on this jury.</p> <p>18 I don't expect any media coverage on this trial. 19 But I don't know, so... Again, if you get wind of anything, 20 just ignore it and you can read up on it after the trial.</p> <p>21 The only information that you will receive about 22 these cases will come to you in this courtroom. You must 23 not consider any information that comes from anywhere else. 24 You must not read newspaper headlines or articles relating 25 to the trial. Also, you must not watch or listen to</p> <p style="text-align: center;">85</p> | <p>1 instructions, you should report it to me. 2 but of course you don't have to. If you do take notes, you 3 should be careful that it does not distract you from paying 4 attention to all the evidence. When you go to the jury room 5 to decide your verdicts, you may use your notes to help you 6 remember what happened in the courtroom. If you take notes, 7 do not let anyone except the other jurors see them.</p> <p>8 Your notes will not be examined by anyone, and 9 when your jury service concludes, your notes will be 10 collected and destroyed.</p> <p>11 You can see that we have chosen a jury of 12 fourteen. After you've heard all the evidence and my 13 instructions, we will draw lots to decide which two of you 14 will be dismissed in order to form a jury of twelve.</p> <p>15 Possible penalty should not influence your 16 decision. It is the duty of the judge to fix the penalties 17 within the limits provided by law.</p> <p>18 I may give you more instructions during the trial, 19 and at the end of the trial I will give you detailed 20 instructions about the law in these cases. You should 21 consider all of my instructions as a connected series. 22 Taken all together, they are the law you must follow.</p> <p>23 After all of the evidence has been presented and 24 the lawyers have given their arguments, I will give you 25</p> <p style="text-align: center;">87</p> |
| <p>1 television and radio comments or accounts of the trial while 2 it is in progress.</p> <p>3 Until your jury service is concluded, you are not 4 to discuss the cases with others, including other jurors, 5 except as otherwise authorized by the court. You are not to 6 read or listen to any news reports about the cases. You may 7 also not use a computer, cellular phone, or other electronic 8 device with communication capabilities while in attendance 9 at trial or during deliberation. These devices may be used 10 during breaks or recesses, but may not be used at any time 11 to obtain or disclose information about a party, witness, 12 attorney, or court officer; news accounts of the cases; or 13 information collected through juror research on any topics 14 raised or testimony offered by any witness or by any 15 exhibit.</p> <p>16 You must not visit the scenes of the occurrences 17 that are the subjects of this trial. If it should become 18 necessary that you view or visit the scenes, you will be 19 taken as a group under court supervision. You must not 20 consider as evidence any personal knowledge you have of the 21 scenes.</p> <p>22 You must not do any investigations on your own or 23 conduct any experiments of any kind. This includes using 24 the Internet for any purpose regarding these cases.</p> <p>25 If you discover a juror has violated my</p> <p style="text-align: center;">86</p> | <p>1 detailed instructions about the rules of law that apply to 2 these cases. Then you will go to the jury room to decide on 3 your verdicts. The verdicts must be unanimous. That means 4 that every juror must agree on them, and they must reflect 5 the individual decisions of each juror.</p> <p>6 It is important for you to keep an open mind and 7 not make decisions about anything in these cases until you 8 go to the jury room to decide the cases.</p> <p>9 I'll now go through the elements of the charged 10 offenses. You will have them in writing. I'm going read 11 through the elements in the first case. I'm not going to 12 repeat them in the second case. The only thing that changes 13 in the second case, primarily a different alleged victim. I 14 believe the locations here, Mr. Bramble, are near each 15 other, in the same apartment complex; correct?</p> <p>16 MR. BRAMBLE: Yes, your Honor.</p> <p>17 THE COURT: All right. They occurred on different 18 dates. Obviously some of the witnesses may be different. 19 But as to the elements, really the only thing that changes 20 from one case to the other is the alleged victim.</p> <p>21 So, I'll read through the first one. In Count 22 One, the defendant is charged with the crime of unarmed 23 robbery. To prove this charge, the prosecutor must prove 24 each of the following elements beyond a reasonable doubt: 25 First, the defendant assaulted or put in fear</p> <p style="text-align: center;">88</p> |

1 Barry Gordon Isaacson.

2 Second, the defendant did not file in the course
3 of committing a larceny. A "larceny" is the taking and
4 movement of someone else's property or money with the intent
5 to take it away from that person permanently. "In the
6 course of a larceny," includes acts that occur in an attempt
7 to commit the larceny, or during the commission of the
8 larceny, or in flight after the commission of the larceny,
9 or in an attempt to retain possession of the property or
10 money.

11 Third, Barry Gordon Isaacson was present while the
12 defendant was in the course of committing the larceny.

13 What I'm going to read here is a less serious
14 crime. I'll make the final decision before you deliberate,
15 but very possibly you will have an alternative within
16 Count One, either guilty of unarmed robbery or guilty of
17 larceny from a person or, of course, not guilty.

18 So the lesser offense. To prove that -- to prove
19 whether the defendant is guilty of a less serious crime
20 known as larceny from a person, the prosecutor must prove
21 each of the following elements beyond a reasonable doubt:

22 First, that the defendant took someone else's
23 property.

24 Second, that the property was taken without
25 consent.

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1 prosecutor must prove each of the following elements beyond
2 a reasonable doubt.

3 First, that the defendant is not a peace officer.

4 A peace officer means an officer of the police department of
5 a city, village or township of this state.

6 Second, that the defendant knowingly represented
7 to Barry Gordon Isaacson that he was a police officer for an
8 unlawful purpose or with the intent to compel Barry Gordon
9 Isaacson to do or refrain from doing any act against his
10 will.

11 Again, the second case, the elements are
12 identical; the alleged victim is different.

13 Mr. Bramble, your opening statement.

14 MR. BRAMBLE: Thank you, your Honor.

15 Ladies and gentlemen of the jury, as Judge Buth
16 indicated, this is my opportunity to provide you with an
17 opening statement. What it is is my opportunity to tell you
18 what witnesses are going come forward and what information
19 they're going to provide you as it relates to the elements
20 of the offenses that the Judge just read to you.

21 I won't actually argue at this time. That's left
22 for closing argument. But I'll just tell you, kind of give
23 you a roadmap as to where we're going and how we're going to
24 get there.

25 I'm going to tell you a couple of things here.

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1 Third, that there was some movement of the
2 property. It does not matter whether the defendant actually
3 kept the property.

4 Fourth, that the property was taken from Barry
5 Gordon Isaacson's person or from Barry Gordon Isaacson's
6 immediate area of control or immediate presence.

7 Fifth, at the time it was taken, the defendant
8 intended to permanently deprive the owner of the property.

9 In Count Two, the defendant is charged with the
10 crime of unlawful imprisonment. To prove this charge, the
11 prosecutor must prove each of the following elements beyond
12 a reasonable doubt:

13 First, that the defendant knowingly restrained
14 Barry Gordon Isaacson. "Restrain" means to forcibly
15 restrict a person's movements or to forcibly confine the
16 person so as to interfere with that person's liberty without
17 that person's consent or without lawful authority. The
18 restraint does not have to exist for any particular length
19 of time and may be related or incidental to the commission
20 of other criminal acts.

21 Second, the defendant restrained Barry Gordon
22 Isaacson to facilitate the commission of another felony,
23 larceny of money from his person.

24 In Count Three, the defendant is charged with the
25 crime of false personation. To prove this charge, the

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1 One is, I'm going to do something I haven't had to do in my
2 20-some years of doing this. One of my victims isn't going
3 to appear here. But he did testify once before, and so
4 we're going to read that transcript into the record here.
5 And I'd ask you to listen to that closely because, again,
6 that's one of the victims: Mr. Isaacson. I want to tell you
7 how this all came about, how this all materialized.

8 You're going to hear from a couple different
9 witnesses, one being a Brian Gray. Brian Gray will testify
10 that on or about November 14 of 2011, he responded to an ad
11 on backpage.com. It was for a massage service. He called
12 the number -- he didn't get an answer -- that was listed on
13 this ad. He didn't get an answer. But at some point the
14 person at that number began to text him back, and they begin
15 to text back and forth on their phones. He will testify
16 that he thought he was talking to the woman in the ad. I
17 submit to you he wasn't, he was actually talking to the
18 defendant or texting back and forth to the defendant.

19 But he receives an area where he should go to,
20 what apartment complex, Apartment Number D1. This was
21 located at the 3000 block of Burlingame in the City of
22 Wyoming, County of Kent, State of Michigan.

23 So Brian Gray went to this address. As he walked
24 up to this address and up to this door, he was confronted by
25 the defendant. The defendant identified himself as a police

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1 officer and told Brian Gray that he matched the description
2 of a person in the area, a suspect in the case. Told him
3 to turn around and he begins to like pat him down and
4 removes Brian Gray's wallet. And then he later says, "Well,
5 you really don't match the suspect description." He gives
6 him back his wallet and sends him on his way.

7 What Brian Gray realizes is that the defendant has
8 taken \$300 out of his wallet. Brian Gray reports it to the
9 police. I'll be candid and upfront with you here.
10 Initially, he doesn't tell the police why he's so
11 embarrassed about why he's going there. He doesn't tell the
12 police upfront why he was going there. Basically, he said
13 he was in the area to see a friend or something.

14 When the police -- and they suspect there's
15 something else going on here -- question him a little
16 further, he eventually acknowledges that "Yes, I was here
17 answering this backpage.com ad. It was for a massage
18 service, and this is when the individual approached me."

19 This incident involving Mr. Gray occurred on
20 November 14. The police don't have any suspects at this
21 time up until November 29th of 2011.

22 At that point, a gentleman by the name of Barry
23 Isaacson came up from Illinois, indicated he was on
24 business. He comes off as really answering this massage
25 service, same ad in this backpage.com. He was going there

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1 for adult services, whether it be for a massage or
2 otherwise. He again calls the same number, gets information
3 back from -- whether it be by text or phone number -- from a
4 person on the other end, telling him to report to Apartment
5 D1.

6 He gets there, basically the same thing happens.
7 The defendant grabs him, turns him around, says, "You're a
8 suspect, I'm investigating some assaults in the area. This
9 is a sting operation." He begins asking if he has any sharp
10 weapons on him. And at this time he's got a shirt on that
11 says "police," the defendant does. He pats him down,
12 removes his wallet; takes approximately \$500 out of the
13 wallet; gives him back the wallet. Barry Isaacson is
14 suspicious because he realizes this person is really not
15 acting the way a police officer would. So he demands at
16 that time, "Let me see some I.D. Let me see your badge."
17 And the defendant keeps saying, "Well, we'll get someone
18 else here. We're going to call in other units here" and
19 basically puts him off, puts him off. Isaacson then says,
20 "Well, give me my money back." The defendant refuses to do
21 so, gets in his car and drives away.

22 Barry Isaacson follows him; gets part of his
23 license plate number; follows him and calls the number
24 again. At some point, the defendant calls him back and
25 tells him again "There will be other units on their way."

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1 Again, Mr. Isaacson realizes isn't the way a police
2 officer acts. So he tells him to follow him to the parking lot
3 and actually takes a photograph of him on his phone that
4 you'll see; the defendant in a car on his phone.

5 He tells him over and over again, "Either give me
6 my money back, or I'm going to call the police." The
7 defendant refuses to give his money back to him, so he does
8 call the police. The police arrive and Detective Swiercz,
9 who is also identified -- also advised of this second
10 incident realizes, "Geez, this sounds remarkably similar to
11 the November 14 incident.

12 They call and are able to get -- I'll let him
13 explain. But since they have the number on the phone,
14 they're able to track the defendant's movements. They track
15 it to a certain area. They know the type of make of car it
16 is, what color it is, and there's a little bit of damage to
17 the car as described by Mr. Isaacson.

18 They go to an address where this is, and they look
19 around and they find the car that's used. I believe it's
20 the defendant's mother's car. They bring in other units.
21 They kind of surround this apartment and the defendant is
22 observed near the back sliding glass door. He is arrested
23 at this time. Again, this is shortly after his
24 confrontation with Mr. Isaacson. The defendant has two
25 phones on him. He has \$497 in cash, which fits

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1 approximately what Mr. Isaacson said was taken from him.

2 The officer, when he arrested the defendant
3 realizes, "Geez, these two phones could be of value, could
4 be evidence in the case." He takes the phones and one of
5 the phones -- one of them is off and one of them is still
6 on; opens it up, and Mr. Isaacson's phone number is on the
7 defendant's phone. So there's no doubt that the defendant
8 and Mr. Isaacson were the ones corresponding or the ones
9 talking or texting at this point.

10 The defendant later acknowledges that he has some
11 contact with somebody in the apartment complex. Ladies and
12 gentlemen of the jury, I'd submit to you that this massage
13 service, this adult service, was nothing more than a ruse to
14 get people show up to Apartment D1 in this complex so that
15 the defendant, posing as a police officer, could lead them
16 and take their money from them. This happened, not on one
17 occasion, but two occasions; once November 14 and once again
18 November 29th.

19 Regarding that identification, while Mr. Isaacson
20 takes a picture of the defendant, once they realize who is
21 involved in this; that the defendant is involved in this,
22 they bring Mr. Gray in to a lineup. And the defendant
23 stands in a physical lineup. And you'll hear Mr. Gray
24 indicate that he picked the defendant out of that lineup.
25 There were five or six people in that lineup, and he picks

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1 him out. There's no doubt that this defendant has been
2 identified both by Mr. Gray and Mr. Isaacson, as the person
3 impersonating a police officer.
4 The facts here, ladies and gentlemen, when you
5 begin to pull them all together, begin to apply them to the
6 law, they are going to indicate that the defendant is guilty
7 of both unarmed robbery or with a lesser included offense of
8 larceny from a person, but also guilty in that he restrained
9 these individuals.
10 You're going to hear Mr. Isaacson say he actually
11 grabs ahold of Mr. Isaacson and pushes him up against a
12 wall. So he does, in fact, restrain both of these
13 individuals, again, under the ruse that he's a police
14 officer and that he has the ability to do this.
15 You're also going to hear that he took this money;
16 that they never consented to it. So, when you begin to
17 apply all this evidence, you're going to find that, not only
18 did he commit this unarmed robbery or larceny from a person,
19 but that he also restrained these individuals and is guilty
20 of unlawful restraint. Finally, that he's also guilty of
21 posing as a police officer. Again, the facts are going to
22 show this.
23 On behalf of Mr. Isaacson and Mr. Gray, at the
24 conclusion of the proofs, I'm going to ask that your verdict
25 reflect that.

1 THE COURT: Ms. Foster.
2 MS. FOSTER: Thank you, Judge. Good morning
3 ladies and gentlemen.
4 Ladies and gentlemen, this case is very simple.
5 The prosecutor has to prove beyond a reasonable doubt that
6 my client, Kelvin Heath, put a fake ad for a massage on
7 backpage.com with real pictures, threw on a t-shirt that
8 says "police"; convinced two unsuspecting men that he was
9 the police and stole money from each of them.
10 At the end of the evidence, ladies and gentlemen,
11 we are certain that this is something the prosecution will
12 not be able to do.
13 I'm going to ask you to consider two questions
14 that I'll present at the end of my opening. But, first, I
15 want to discuss reasonable doubt. As I indicated during
16 voir dire, you will and have been and you will in the future
17 be given various opportunities to hear and read the
18 instruction for reasonable doubt. It's almost -- it's a
19 legal instruction and maybe a little confusing to some of
20 you. Just in case that is the case, let me kind of give you
21 more of a laymen's definition of reasonable doubt.
22 First you need to know, ladies and gentlemen, that
23 this is a standard required by the prosecution in all
24 criminal cases. This means that the prosecution must prove
25 his case to the extent that there is no reasonable doubt in

1 the minds of a reasonable person. Who is a reasonable
2 person? That would be you. That's the purpose of
3 voir dire; to make sure that we have individuals who are
4 going to listen to this case, reflect on this case, listen
5 to all the evidence and testimony and make a fair and
6 impartial decision based on the evidence and testimony in
7 the case. Nothing more, nothing less.
8 If there is a doubt, ladies and gentlemen, and if
9 that doubt that is raised does reflect -- or does affect a
10 reasonable person -- you being the reasonable person --
11 believe that the defendant -- my client -- is guilty, then
12 you, ladies and gentlemen, are not satisfied beyond a
13 reasonable doubt.
14 Think of reasonable doubt this way: it's a doubt
15 that would make a reasonable person -- again you being that
16 reasonable person -- hesitate in the most important of your
17 affairs. The facts of this case, as you've already heard
18 the prosecution's summations of the case, is real strange.
19 In my almost 20 -- in my over 20 years of practice, I've
20 never come across a case like this.
21 It kind of boils down to this. On November 14, a
22 guy by the name of Brian Gray was relieved of \$300 from a
23 guy he says was a police officer. Brian claimed that he was
24 at the Swiss Valley Apartments in Wyoming visiting a friend
25 name Josh. But he didn't know the guy's last name or in

1 which apartment this fellow lived. Interestingly, this \$300
2 was all in \$20 denominations.
3 Now the police officers who interviewed him, they
4 believed that something happened to him, but they didn't
5 believe his story about being at this location and why he
6 was actually there. It was later determined that he was
7 responding to an ad from backpage.com. Mr. Bramble, in his
8 opening, indicated that Mr. Gray was looking for a massage.
9 Well, you're going to see a printout of that backpage.com
10 ad. I guarantee you that the word "massage" is going to be
11 the farthest thing from your mind.
12 Two weeks later, November 29, this other
13 gentleman, Barry Isaacson, was relieved of \$470 from a guy
14 saying he was a police officer. Mr. Isaacson was up from
15 Illinois, claiming that he was on business here in Grand
16 Rapids. He went to the same apartment complex. As it turns
17 out -- and as he reluctantly later confessed to the police
18 officers when they interviewed him -- he was up here for the
19 same exact reason; looking for a massage from an ad in
20 backpage.com. He didn't want to admit that was the reason
21 he was up here.
22 And as there was an alluding to by Mr. Bramble,
23 you're going to hear earlier testimony where he was
24 cross-examined by me and asked specifically of his purpose
25 for being here in Michigan. Even under oath he wasn't

So you're going to have to -- I'm asking you right here and right now to consider that dishonesty on his level. I also want you to consider the fact that he's not even here to testify. We're going to have to use other means for you to hear his testimony.

The reason why he is not here is because he refuses to answer to a subpoena by the prosecution to be here. Consider that, too, folks. You have every right to do so. In this case there will be no physical evidence that my client was in this apartment complex; that he had anything to do with this backpage ad. I believe there's -- there may be a piece of physical evidence that there's a shirt that belonged to my client.

My client will not deny that that is his shirt. But I don't believe you will see any other -- it's not a police shirt -- it's not the so-called shirt with the name "police" on it either. There is no other physical evidence that you will hear of. There is no other eyewitness testimony that you'll hear. The only eyewitnesses to these alleged crimes are the two guys looking for the massages. There will be no corroborating testimony. Basically this case boils down to whether or not you're willing to believe two philanderers.

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So here are the two questions: Is that proof beyond a reasonable doubt, ladies and gentlemen? Are you convinced beyond a reasonable doubt that my client committed the alleged offenses? Consider those questions, and at the end of the testimony it is our contention that your verdict has to be not guilty.

Thank you.

THE COURT: Mr. Bramble, your first witness.

MR. BRAMBLE: Brian Gray.

THE COURT: State your full name, please.

MR. GRAY: Brian James Gray.

Do you solemnly swear or affirm that the testimony you're about to give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. GRAY: Yes.

THE COURT: Please be seated.

BRIAN JAMES GRAY,
called by the People at 11:50 a.m., sworn by the Court,
testified:

DIRECT EXAMINATION

BY MR. BRAMBLE:

Q. How do you spell your last name, Mr. Gray?

A. Gray. It's G-R-A-Y.

Q. Are you employed, sir?

A. Yes.

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1 Q. Where are you employed?

A. Hope Network.

Q. What do you do there?

A. I work at a group home with developmentally disabled individuals.

Q. How long have you done that?

A. Eight years.

Q. All right. I want to draw your attention back to November 14 of 2011. Did you respond to an ad on that day?

A. Yes.

Q. And where did you see this ad?

A. On backpage.

Q. What is backpage?

A. It's similar to like a Craigslist type of site that has lots of different advertisements and stuff.

Q. What type of advertisement did you respond to?

A. It was for a massage.

Q. And did you -- were you given a phone number to call?

A. Yes.

Q. Did you call that number?

A. I called it, yes.

Q. Did you get ahold of someone right away when you called it?

A. I got a text message back.

Q. You got a text message back?

A. (Nods head affirmatively)

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Q. Did you begin to text back and forth with this person who had texted you back?

A. Yes.

Q. Did this text come from the number you had called?

A. Yes.

Q. Who did you think you were communicating with when you were texting back and forth?

A. It was supposed to be a female that was supposedly from Northern Michigan, it said.

Q. Through this texting were you -- did you come to an agreement or understanding as to where you would meet?

A. Yes.

Q. Where was it you were to meet?

A. At the Swiss Valley Apartments.

Q. Did a specific apartment come into play?

A. Yeah. There was a number. I can't remember offhand.

Q. All right. D1 sound --

A. Yes. Yes.

Q. Did you -- approximately 6:15 on November 14 --

A. Yes.

Q. -- did you go to the Swiss Valley Apartments?

A. Yes.

Q. Is that apartment complex located about the 2900 block of Burlingame?

A. Yes.

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1 Q. Is that in the City of Wyoming, County of Kent, State of
2 Michigan?

3 A. Yes.

4 Q. When you arrived at the apartment complex, what did you do?

5 A. I walked to see where Apartment D1 was. And, yeah, as I
6 walked into that part of the building, a man came the other
7 direction and stated that there was a sting operation; that
8 there was a rapist in the area; and he asked for my wallet.

9 So, you know, I thought it was a cop. He said he
10 was a police officer. And then he patted me down, and in
11 the end said that I did not fit the description and I was
12 free to go.

13 Q. Had you given him your wallet?

14 A. Yes.

15 Q. Did the defendant, was he facing you when he patted you
16 around, or did he turn you around?

17 A. He turned me around.

18 Q. How did your wallet come out of your pocket?

19 A. He asked for ID, and I just, you know, took my wallet, you
20 know, since he asked for the ID.

21 Q. So, you give him your wallet; you're told then by this
22 person that you don't match the suspect's description. What
23 does this person do? Does he tell you you're free to go
24 then?

25 A. Yeah. He says I'm free to go.

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1 Q. What did you -- who left the building first?

2 A. I believe I did.

3 Q. And where did you go?

4 A. Back to my car.

5 Q. What did you do once you got there?

6 A. I looked in my, you know, went through my wallet and noticed
7 that my money was missing.

8 Q. How much money was missing?

9 A. \$300.

10 Q. I'm sorry?

11 A. \$300.

12 Q. Do you remember what denominations that \$300 was in?

13 A. Not offhand, no.

14 Q. The next morning, November 15 of 2011, did you receive a
15 phone call from the same number you responded to in the ad?

16 A. Yes. Yes.

17 Q. And what did this person say?

18 A. I -- I did not answer it at this time. The night before I
19 did receive a call as -- as well. Well, I received a voice
20 -- I'm trying to think exactly -- I believe it was a
21 voicemail stating that, you know, I needed to go to the
22 police office; that my, like, you know, license plate number
23 -- they had my license plate number and that I needed to go
24 down to the police office -- police station. And this was
25 after eleven o'clock at night.

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1 Q. Was it a male caller? Male voice or female voice?

2 A. Yes; it was a male.

3 Q. Now, did you contact the police?

4 A. Yes.

5 Q. When did you contact the police?

6 A. At, you know, shortly after it happened. I would say within
7 15 -- yeah, 10, 15 minutes.

8 Q. All right. Did you tell the police why -- initially why you
9 were showing up there?

10 A. Not initially.

11 Q. All right. And can you explain to this jury why you didn't
12 tell the police?

13 A. Embarrassed.

14 Q. Did you eventually tell the police the truthful reason as to
15 why you were present at that apartment complex?

16 A. Yes.

17 Q. Did the police ask you to do a sketch of the suspect?

18 A. Yes.

19 Q. Did you do that?

20 A. Yes.

21 Q. Approximately a couple weeks later, were you also asked to
22 go to the -- to go and observe a physical lineup?

23 A. Yes.

24 Q. Did you do so?

25 A. Yes.

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1 Q. Were you able to pick someone out of the lineup as being the
2 person who was posing as a police officer?

3 A. Yes.

4 Q. I'm going to show you what's been marked as People's
5 Proposed Exhibit 4.

6 MR. BRAMBLE: May I approach the witness, your
7 Honor?

8 THE COURT: Yes.

9 BY MR. BRAMBLE:

10 Q. Is this picture with six people in it the picture they
11 showed you -- or the lineup you observed?

12 A. Yes.

13 Q. Did you pick someone out of that lineup as being the person
14 who --

15 A. Yes.

16 Q. What number?

17 A. Five.

18 MS. FOSTER: I've seen it.

19 BY MR. BRAMBLE:

20 Q. Did they make you fill out a card indicating what number you
21 chose?

22 A. Yes.

23 Q. I'll show you what's marked proposed Exhibit 5 and ask if
24 you recognize this card?

25 A. Yes.

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1 Q. You put down number -- picked number five?
2 A. Yes.
3 Q. Your name on there, as well?
4 A. Yes.
5 Q. Also, I'm going to show you what's marked as proposed
6 Exhibit 3, and ask if you can recognize specifically the
7 phone number on there?
8 A. Yeah. I believe that is -- is the phone number.
9 Q. All right. Is that phone number area code 601.831.0149?
10 A. Yes.
11 Q. Is this comparable to the type of ad that you responded to
12 on backpage?
13 A. Yes. Yes.
14 MS. FOSTER: I've seen it.
15 MR. BRAMBLE: Your Honor, at this time I would
16 move for the admission of proposed Exhibits 3, 4, and 5.
17 MS. FOSTER: May I voir dire on the two proposed
18 -- the proposed Exhibits 4 and 5?
19 THE COURT: Yes.
20 MS. FOSTER: Exhibit 3 is the backpage ad; right?
21 MR. BRAMBLE: Right.
22 MS. FOSTER: Okay. Exhibit 4 and 5, your Honor.
23 I don't have any objection to the admission of Exhibit 3.
24
25

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1 VOIR DIRE
2 BY MS. FOSTER:
3 Q. This will just take a couple minutes with regard to -- this
4 is involving the lineup.
5 A. Okay.
6 Q. Can you kind of walk us through how you participated in this
7 lineup? In other words, did you get a phone call from
8 somebody telling you to come down?
9 A. Yes.
10 Q. Where was this lineup taken? Where did this lineup take
11 place?
12 A. It was at the jail, the Kent County jail.
13 Q. Do you remember who you met there?
14 A. Detective Swiercz, who I met there. And then I'm not --
15 Q. That's fine about names. Do you remember how many people
16 were there?
17 A. There was two.
18 Q. Two. One was a detective. Do you remember who the other
19 individual was?
20 A. No.
21 Q. What happened once you got there? Were you led to an area,
22 a room? What happened?
23 A. Yeah. We were led to the area, and then after that to the
24 room.
25 Q. Okay. Can you describe the room?

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1 A. It's a -- was a small room with benches, a few like benches
2 going up.
3 Q. Okay. And did you observe the six gentlemen in jail greens
4 come into another room?
5 A. They -- they came from another room into this room, into
6 behind the glass.
7 Q. Okay. They couldn't see you; correct?
8 A. Correct.
9 Q. Was it like you see on television, they can't see you, but
10 you can see them kind of a thing?
11 A. Correct. Yes.
12 Q. Approximately how far were they from you?
13 A. I would say ten feet maybe.
14 Q. Okay. I see you're wearing glasses. Were you wearing
15 glasses that day?
16 A. Yes, I was.
17 Q. Okay. And your vision is correct at the 20/20 with the
18 glasses on?
19 A. Correct.
20 Q. And do you remember how many people were in the room with
21 you when you were asked to look at these gentlemen?
22 A. I'm -- I don't remember.
23 Q. Was there more than two at this point?
24 A. I think there might have been a third. I'm not positive.
25 Q. Were there any women in the room?

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1 A. It's a little ways back. I --
2 Q. You don't remember?
3 A. I'm not positive.
4 Q. Okay. How long were you allowed to observe the men in the
5 lineup?
6 A. Very short time. You know, they were front and then each
7 asked to go to the side view.
8 Q. Okay. And when did you fill out a card that Mr. Bramble
9 mentioned?
10 A. Right after I was -- after they left the room.
11 Q. During the time that you were in the room observing, did any
12 police officer, anybody make any statements to you about any
13 of the six gentlemen?
14 A. No.
15 Q. Did you make any statements to the police officers about any
16 of the six gentlemen?
17 A. No.
18 Q. Did you point and say, "It's him, number such and such," or
19 anything like that?
20 A. No.
21 Q. Were you instructed not to do that?
22 A. Correct. Yes.
23 Q. And this card that you filled out was after you left the
24 room?
25 A. Correct.

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MS. FOSTER: With that, I have nothing further,

THE COURT: Mr. Bramble.

MR. BRAMBLE: I would move for admission of 4 and 5 at this point.

MS. FOSTER: At this point, I have no objection.

THE COURT: Exhibits 3, 4 and 5 are admitted.

(People's Exhibits 3-5 admitted)

BY MR. BRAMBLE:

Q. At this lineup, did anyone tell you whether or not the person was going to be in there, or tell you which one to pick, or anything like that?

A. No, no.

Q. That person that you picked out of that lineup, was this the person that approached you and said they were a police officer on November 14, 2011?

A. Yes.

Q. Is that person present here in the courtroom?

A. Yes.

Q. Can you point out where he's seated right now and what he's wearing right now?

A. He's sitting right over there with the white shirt. Yes.

MR. BRAMBLE: Your Honor, may the record reflect the identification of the defendant?

THE COURT: Yes.

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an ad in backpage.com? That's correct; right?

A. Correct.

Q. And asked what backpage is about, you indicated it's like Craigslist. Is that your definition of backpage?

A. Yes. It's the same type of format. They don't -- it's not just massages. They do -- they have job placements, you know.

Q. But you weren't going to backpage looking for a job placement; were you?

A. No.

Q. You indicated -- and you've said it again today -- that you were looking for a massage?

A. Correct.

MS. FOSTER: Exhibit Number 3, please.

MR. BRAMBLE: Let me make sure that's it.

BY MS. FOSTER:

Q. Can you take a look at this that's already been admitted into evidence and tell me what part of that ad convinced you that this person would give you a good massage?

A. I -- I can't answer.

Q. So, you weren't really looking for a massage with this particular individual; were you? Remember you're under oath.

A. No, not necessarily.

Q. You were relieved of \$300; is that your testimony?

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BY MR. BRAMBLE:

Q. Prior to this date, November 14, 2011, had you ever met the defendant?

A. No.

Q. And prior to the preliminary exam, had you ever met a person named Barry Isaacson?

A. No.

Q. Do you know who that is?

A. No. It does not register, no.

Q. Okay.

MR. BRAMBLE: Thank you. I have nothing further.

THE COURT: Ms. Foster.

MS. FOSTER: Thank you, your Honor.

CROSS-EXAMINATION

BY MS. FOSTER:

Q. Good afternoon, Mr. Gray. You indicated that you work at Hope Network?

A. Correct.

Q. And are you married?

A. No.

Q. Is Hope Network, is that a faith-based organization?

A. Loosely faith-based.

Q. Loosely faith-based. Okay. How old are you, sir?

A. I'm 36.

Q. Thirty-six. And you indicated that you were responding to

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A. Correct.

Q. What money was agreed upon when you had these series of texts or telephone messages with whom you believed to be the person in this ad?

A. \$100.

Q. \$100. Had you ever been to a massage therapist, a legitimate one in an office somewhere?

A. Yes, I've had them.

Q. How much do they generally charge?

A. Sixty-five.

Q. Okay. So my question to you, sir, is why would you pay more to go to a massage therapist from backpage.com when you can go to a legitimate massage therapist in a legitimate office for less money?

So, you weren't looking for a massage with this woman; were you? You were hoping to score; weren't you? Just be honest. You're under oath.

A. Yes, yes.

Q. You were hoping to score?

A. Yes.

Q. You're single. You said you're not married, so there's no shame in that.

You said that you were accosted by an individual saying that he said that you were a suspect in some type of assault that was happening in the area; correct?

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| | |
|---|---|
| <p>1 A. Correct.</p> <p>2 Q. Exactly how long were you able to look at this individual</p> <p>3 who accosted you, this individual posing as a police</p> <p>4 officer?</p> <p>5 A. I would say two different times for a total of a minute.</p> <p>6 Q. A total of a minute. Okay. When the person -- did the</p> <p>7 person approach you from in front or from behind?</p> <p>8 A. He came from in front, but, you know --</p> <p>9 Q. He swung you around?</p> <p>10 A. Swung me. Yeah.</p> <p>11 Q. And did he force you up against a wall? Did he make you put</p> <p>12 your hands up?</p> <p>13 A. Yes.</p> <p>14 Q. And you didn't resist; did you?</p> <p>15 A. No.</p> <p>16 Q. And you -- did you question whether or not he was a police</p> <p>17 officer?</p> <p>18 A. No, not at the time.</p> <p>19 Q. You only questioned after you found out your money was gone;</p> <p>20 is that a fair statement?</p> <p>21 A. (Nods head affirmatively)</p> <p>22 Q. Is that a "yes"?</p> <p>23 A. There was a little bit of a question at the end when it was</p> <p>24 just, you know, so abrupt, "You don't fit the description;</p> <p>25 you can go to your -- you can go back to your car." That</p> <p style="text-align: center;">117</p> | <p>1 question it basic"</p> <p>2 Q. Okay. So, if you -- and tell me I'm right or wrong, he</p> <p>3 comes up to you, he turns you around, and you put your arms</p> <p>4 or your hands up, up against a wall like you're being patted</p> <p>5 down like you see on television?</p> <p>6 A. Correct.</p> <p>7 Q. So, your hands were on a wall. Are you indoors or outdoors?</p> <p>8 A. In -- well, it's -- you know how apartment complexes --</p> <p>9 Q. Have kind of that out --</p> <p>10 A. -- it's kind of an outdoor. Yeah, it's not --</p> <p>11 Q. I got ya. So, you weren't quite indoors, but you weren't on</p> <p>12 a brick wall either?</p> <p>13 A. Correct.</p> <p>14 Q. So, you got your arms up and he tells you to reach in and</p> <p>15 grab your wallet. And I'm assuming you're right-handed. I</p> <p>16 shouldn't assume.</p> <p>17 A. I'm left-handed.</p> <p>18 Q. You're left-handed. See, I shouldn't assume.</p> <p>19 So, you grab your wallet out of your pocket and</p> <p>20 you just give it to him; correct?</p> <p>21 A. Correct. I believe that he asked for it before I -- he</p> <p>22 frisked me. But I'm not completely positive on that.</p> <p>23 Q. Well, did he -- was there any like forcible movements on</p> <p>24 this person's part? In other words, did he shove you up</p> <p>25 against a wall? Did he -- you know what you see on</p> <p style="text-align: center;">119</p> |
| <p>1 seemed a little bit --</p> <p>2 Q. Okay.</p> <p>3 A. -- strange.</p> <p>4 Q. So, he turns you around, he got you up against a wall, and</p> <p>5 he patted you down and he took a wallet -- took your wallet.</p> <p>6 Did you have your keys on you, too?</p> <p>7 A. I did have my keys on me.</p> <p>8 Q. Did he take those as well?</p> <p>9 A. No.</p> <p>10 Q. Just the wallet?</p> <p>11 A. Yes.</p> <p>12 Q. What kind of wallet? Was it leather?</p> <p>13 A. It's a leather wallet.</p> <p>14 Q. Okay. And you said you didn't notice until after he was</p> <p>15 gone that the money was gone; is that a fair statement?</p> <p>16 A. Correct.</p> <p>17 Q. And while after this individual took your wallet, did you --</p> <p>18 did you turn around and get a good look at him, or did you</p> <p>19 remain faced in front of the wall that you were up against?</p> <p>20 A. Umm, before I left?</p> <p>21 Q. When the person took the wallet from your pocket, I'm</p> <p>22 assuming that you were --</p> <p>23 A. He didn't take it from my pocket. He asked for ID, and I</p> <p>24 gave him -- and I gave him my own -- whole -- he basically,</p> <p>25 when I showed the ID, he took the wallet. And I didn't</p> <p style="text-align: center;">118</p> | <p>1 television -- did he cut your legs apart?</p> <p>2 A. He didn't cut my legs. No.</p> <p>3 Q. He shove you?</p> <p>4 A. You know, pretty forcefully. I wouldn't call it a full-</p> <p>5 forced shove, but a -- you know, a --</p> <p>6 Q. Did he say, "Get up against the wall. You're under arrest,"</p> <p>7 or anything like that?</p> <p>8 A. He didn't say, "You're under arrest." He said, "You're a</p> <p>9 suspect," and then he acted like he was on the phone with --</p> <p>10 on his cell phone or on, you know, on a police -- I don't</p> <p>11 know what they -- walkie-talkie that he was with -- you</p> <p>12 know, that he was talking with someone else.</p> <p>13 Q. Okay. So, my question to you again is, when all this was</p> <p>14 going on, were you looking at him or were you facing</p> <p>15 forward? Were you looking -- were you -- where were you</p> <p>16 looking at when all this was going?</p> <p>17 A. I was against the wall.</p> <p>18 Q. Okay. So, you weren't looking at him very much, were you?</p> <p>19 A. Not at this point.</p> <p>20 Q. When he gives the wallet back to you, does he just walk</p> <p>21 away?</p> <p>22 A. I walk, and then he -- yeah, he walks away.</p> <p>23 Q. Do you walk away together like you're two guys walking</p> <p>24 beside each other?</p> <p>25 A. No, no.</p> <p style="text-align: center;">120</p> |

1 Q. Does he run?
2 A. ~~He did not run.~~
3 Q. Did you see him get into a vehicle?
4 A. No.
5 Q. Okay. At what point did you actually have a chance to look
6 at him? I'm assuming when he first approached you; correct?
7 A. **When he first approached me, yes, and then when I left.**
8 Q. And when you left. Okay. But you didn't see where he went
9 and what vehicle he got into?
10 A. No.
11 Q. Okay.
12 MS. FOSTER: You can have that back.
13 BY MS. FOSTER:
14 Q. Do you recall at some point giving -- talking to a sketch
15 artist?
16 A. Yes.
17 MS. FOSTER: Do you have that?
18 MR. BRAMBLE: I can get it for you.
19 MS. FOSTER: (Reviewing)
20 BY MS. FOSTER:
21 Q. When did you talk to the sketch artist?
22 A. **It was that same evening.**
23 Q. So, it was like less than 24 hours away?
24 A. Yes.
25 Q. Less than 12 hours?

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1 A. Yes.
2 Q. Okay. How much time did you spend with the sketch artist?
3 A. **Fifteen minutes maybe.**
4 Q. Okay. And obviously it was, it was -- the memory of this
5 guy's face was pretty fresh in your head; is that a fair
6 statement?
7 A. **I would say so, yeah.**
8 Q. Okay. Fresher than when you were in a lineup two or three
9 weeks later; is that a fair statement?
10 A. Yes.
11 MS. FOSTER: I'd like to mark this, your Honor,
12 as --
13 (Defense Exhibit A marked)
14 MS. FOSTER: I'd like to mark this as proposed
15 Defense Exhibit A, your Honor.
16 And may I approach the witness with this?
17 THE COURT: You may.
18 MS. FOSTER: Thank you.
19 BY MS. FOSTER:
20 Q. Did you ever see this photograph -- or this photograph or
21 whatever you want to call it -- composite, I guess?
22 A. Yes.
23 Q. And was this a composite that was done after you gave the
24 sketch artist, or whoever it was, your description of this
25 individual?

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1 A. Yes.
2 Q. And was this the -- face, was this the face you agreed
3 upon was the likeness of the person who had assaulted you or
4 who had robbed you, in your mind?
5 A. **Yeah. It was as close as the computer could, you know,**
6 **generate that I saw.**
7 Q. Okay.
8 MS. FOSTER: At this time we would ask for this
9 exhibit to be admitted as Defense --
10 MR. BRAMBLE: (Reviewing)
11 MS. FOSTER: I would ask that this exhibit be
12 admitted as Defense -- proposed Defense Exhibit A.
13 MR. BRAMBLE: No objection, your Honor.
14 THE COURT: Admitted.
15 (Defense Exhibit A admitted)
16 MS. FOSTER: Thank you.
17 BY MS. FOSTER:
18 Q. You said it took you about 15 or so minutes to provide a
19 physical facial description of the person who had accosted
20 you?
21 A. Yes.
22 Q. Okay. And again, that was done within a few hours of this
23 incident; correct? That same day?
24 A. Yes.
25 Q. What time of day did you go to this apartment complex?

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1 A. **It was in the evening.**
2 Q. Okay. Was it still light out? No. It would have been
3 November. It probably was dark.
4 A. **Was dark.**
5 Q. Okay. Was the apartment complex well lighted?
6 A. **It was. That area, yes, it was well lighted.**
7 Q. So, it was dark out, but it was pretty well-lit?
8 A. **(Nods head affirmatively)**
9 Q. You indicated you did the sketch thing that same evening?
10 A. Yes.
11 Q. Can you give us an approximate time?
12 A. **Nineish, I believe, but I can't -- you know I'm --**
13 Q. Can you tell us how you characterized this individual? What
14 he looked like, his age? Tell us what you thought he looked
15 like to you. When the police asked you -- when they asked
16 you a description, what description did you give?
17 A. **I said, you know, in his thirties.**
18 Q. Okay.
19 A. **Yeah. He -- short of stature, but still, you know, quite**
20 **built.**
21 Q. Um-hmm (affirmatively), yes.
22 A. **And yeah, I wasn't positive on the --**
23 Q. So, you said thirties?
24 A. **I could remember -- but I wasn't positive on the hair and**
25 **whether he had -- I knew it was either short or shaved, but**

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1 Q. Did he have a shirt that said "police" on it?

2 A. It was similar to a shirt -- it didn't say -- whether it

3 said "police" or not, I don't believe it did. But it was

4 similar to kind of a shirt you would see on cops when they

5 do undercover stuff, like a black with some lettering on it.

6 Q. Okay.

7 MS. FOSTER: Excuse me (confers with client).

8 BY MS. FOSTER:

9 Q. Do you remember what -- do you remember describing the

10 person's build?

11 A. Yes.

12 Q. How would you describe his build?

13 A. He was shorter and quite, you know, strong, you know.

14 Q. Strong and short?

15 A. Short. And he was strong.

16 Q. You never said he was thin?

17 A. No.

18 Q. You never described him as thin?

19 A. No. I might have said, you know, that he wasn't, you

20 know --

21 Q. Girth.

22 A. You know, girth, yeah. But I don't believe I ever used the

23 word "thin" either.

24 MS. FOSTER: Just a moment, your Honor (confers

25

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1 with client).

2 BY MS. FOSTER:

3 Q. Okay. Turning to this Exhibit Number [sic] A or Letter A, I

4 want to have you --

5 MS. FOSTER: If you don't mind, if I can approach

6 the witness again, your Honor?

7 THE COURT: You may.

8 BY MS. FOSTER:

9 Q. If you look in that first line, just read it to yourself.

10 Does that accurately reflect how you described the

11 individual that assaulted you or approached you and posed as

12 a police officer?

13 A. Yes. That looks correct.

14 Q. You agreed to that picture, that face, and you agreed to the

15 description. Is that a fair statement?

16 A. Yes.

17 Q. Okay.

18 MS. FOSTER: I'll have that back, please.

19 BY MS. FOSTER:

20 Q. So, if the description indicates "black male approximately

21 30 years of age, slender build, approximately 150 pounds,"

22 that -- you would agree with that?

23 A. Yes.

24 Q. Okay. And this composite, this computer-generated image

25 actually shows a man that looks approximately 30; correct,

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1 A. Correct.

2 MS. FOSTER: Okay. I don't think I have anything

3 further, your Honor. Thank you.

4 THE COURT: Mr. Bramble?

5

6 REDIRECT EXAMINATION

7 BY MR. BRAMBLE:

8 Q. That composite, I thought I heard you say that this was the

9 best that the computer could generate?

10 A. Yeah. I don't think it was -- you know, we went through a

11 lot of stuff, and that was the most similar that I saw with

12 the -- with it.

13 Q. With the computer?

14 A. Yes.

15 Q. But you did indicate it was a black male?

16 A. Yes.

17 Q. Approximately 5'7 to 5'8?

18 A. Correct.

19 Q. Slender -- or you indicated strong build?

20 A. Yeah. I -- I definitely mentioned to them that, you know, a

21 stronger build.

22 Q. Do you remember telling the police that possibly with yellow

23 lettering on the -- black, long-sleeved t-shirt possibly

24 with yellow lettering on the front?

25 A. Yes.

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1 Q. Person was in their thirties or 30?

2 A. In thirties, I thought.

3 Q. How did you describe the hair?

4 A. I -- I wasn't sure if there was a little bit of hair or if

5 it was completely shaved. I wasn't positive on -- on that.

6 Q. When you were doing this composite, did anyone suggest to

7 you what you should do or what you should use as your

8 identifier? Did anyone try to put words in your mouth?

9 A. No, no.

10 Q. You were -- said you were embarrassed by the police -- by

11 going to the police and telling them initially why you did

12 this?

13 A. Yeah.

14 Q. I mean, are you still embarrassed about that?

15 A. Yes.

16 MR. BRAMBLE: I don't think I have anything

17 further, your Honor.

18 THE COURT: Ms. Foster.

19 MS. FOSTER: Just one question.

20

21 RECROSS-EXAMINATION

22 BY MS. FOSTER:

23 Q. Based on your own description, you said you're 36; correct?

24 A. Correct.

25 Q. So, based on your own description of this individual, you

believe him to be approximately your age if not younger?

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Thank you.

THE COURT: Mr. Bramble?

MR. BRAMBLE: Nothing further.

THE COURT: Thank you very much. You are excused.

(At 12:22 p.m., witness stepped down)

MR. BRAMBLE: Your Honor, at this time I would like to read in the testimony of Barry Isaacson.

THE COURT: Come on up, please.

Ladies and gentlemen of the jury -- Ms. Foster?

(Confers with the Court)

(At 12:23 p.m., sidebar had outside of reporter's hearing)

THE COURT: You can be seated. Ladies and gentlemen of the jury, correct me if I'm wrong, here Mr. Bramble, but you propose to read in the sworn testimony taken at a previous proceeding of the alleged victim in the other case, Mr. Isaacson?

MR. BRAMBLE: Yes, your Honor.

THE COURT: It's my understanding he's a resident of the State of Illinois and he's just simply not here today.

MR. BRAMBLE: Correct, your Honor.

THE COURT: All right. I'm going to allow, ladies

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and gentlemen of the jury, his sworn testimony to be read in.

Obviously, this is Officer Swiercz; this is not Mr. Isaacson. I believe, Mr. Bramble and Ms. Foster, you were present at the prior proceeding; correct?

MR. BRAMBLE: I was not.

THE COURT: Another representative of the prosecutor's office?

MR. BRAMBLE: Yes, your Honor.

THE COURT: And Ms. Foster, you were there?

MS. FOSTER: I was there, your Honor.

THE COURT: You're to consider this as sworn testimony, ladies and gentlemen of the jury, in this case. Officer Swiercz will be role playing the role of Mr. Isaacson; another individual is representing the prosecutor's office, but Mr. Bramble will ask the questions and do the examination and Ms. Foster will play her part.

Again, obviously this is not Mr. Isaacson, but you are to consider this as sworn testimony as evidence in the case.

MR. BRAMBLE: Thank you, your Honor.

Can we either have judicial notice or will the defense agree that this prior hearing was conducted before the Honorable Steven M. Timmers in Wyoming District Court on Wednesday, December 14th of 2011?

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MR. BRAMBLE: Thank you.

(At 12:25 p.m., testimony of Barry Isaacson read, not reported)

THE COURT: You have an objection, then?

MS. FOSTER: No.

THE COURT: Or just the record will reflect --

MS. FOSTER: I want the record to accurately reflect that we are obviously reading a transcript from an earlier proceeding. At the time when the prosecutor asked if these two exhibits could be admitted, I did not object to them because the actual witness was on the stand and could testify to their veracity. Since we don't have that actual witness today, but it's an exact rendition of what was said on that -- during that earlier proceeding under oath, I will not object to the admission of these two documents.

THE COURT: I will admit them.

(People's Exhibits 1 & 2 admitted from a prior proceeding)

(Reading continues at Page 17, Line 18)

MS. FOSTER: Yes.

THE COURT: That completes the reading; is that correct?

MS. FOSTER: I think that completes it.

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THE COURT: Mr. Bramble, do you have a short witness?

MR. BRAMBLE: I don't.

THE COURT: Good time to break?

MR. BRAMBLE: Probably would be a good time to break.

THE COURT: Ladies and gentlemen of the jury, we will recess now and resume promptly at two o'clock. You are excused until two o'clock for lunch.

Again, I'll caution you not to have any contact with anybody involved in the case; not to discuss the case in any way. You may go.

(At 12:52 p.m., jury exits courtroom)

THE COURT: We're in recess.

MS. FOSTER: What time do you want us back, sir?

THE COURT: Two.

MS. FOSTER: Two. Okay.

(At 12:52 p.m., recess had)

(At 2:06 P.M., jury resumes seats)

THE COURT: Be seated. Mr. Bramble, your next witness.

MR. BRAMBLE: Thank you, your Honor. Donald VerHage.

THE COURT: State your full name, please.

MR. VERHAGE: First name is Donald; last name is

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the testimony you're about to give in this matter will be the truth, the whole truth, and nothing but the truth, so help you God?

MR. VERHAGE: I do.

THE COURT: Please be seated.

DONALD VERHAGE,

called by the People at 2:07 p.m., sworn by the Court, testified:

DIRECT EXAMINATION

BY MR. BRAMBLE:

Q. Mr. VerHage, do you spell VerHage with a capital H?

V-E-R-H-A-G-E?

A. Yes, sir.

Q. You are employed?

A. I am. City of Wyoming.

Q. In what capacity are you employed there with the City of Wyoming?

A. As a police officer, road patrol.

Q. How long have you been employed as a police officer?

A. Approximately 18 years.

Q. What are your -- where is your current assignment within that department?

A. My current assignment is on road patrol on the day shift,

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6:00 a.m. to 4:00 p.m.

Q. How long have you worked the road shift -- road patrol?

A. About 16 out of the 18 years.

Q. Okay. I want to draw your attention back to November 29 of 2011. Were you called to the Swiss Valley Apartments?

A. I was.

Q. And why were you called there? Why were you dispatched there?

A. Reference original report of a possible robbery in the lot.

Q. Did you go to that apartment complex?

A. I did.

Q. Is that located on Burlingame Street?

A. It is. It's the southwest corner of Burlingame and Prairie Parkway.

Q. That's here in the County of Kent, State of Michigan?

A. Yes, it is.

Q. Who did you meet there?

A. I pulled in and I met with the caller: Mr. Barry Isaacson.

Q. Did you interview Mr. Isaacson?

A. I did.

Q. Take down information from him?

A. Yes, I did.

Q. And that included the specifics about the robbery?

A. Yes, sir.

Q. All right. At some point in time were you provided a name

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I was.

Q. Who provided you with that name?

A. I believe I received it two ways but, first, from Detective Swiercz.

Q. You indicated a second way?

A. Yes.

Q. How so?

A. Dispatch. There's multiple things going on, but I was also in contact with dispatch via phone; radio, as well as phone with Detective Swiercz. I was getting it from both sources.

Q. And Detective Swiercz can explain how he got that particular name?

A. Yes.

Q. All right. But you were given the name of Kelvin Heath.

Did Mr. Isaacson give you a description of the car?

A. He did.

Q. And do you remember that description?

A. Mr. Isaacson told me that --

MS. FOSTER: Your Honor, hearsay objection.

THE COURT: Sustained.

MR. BRAMBLE: I'll rephrase the question.

BY MR. BRAMBLE:

Q. Did you go to 1833 Prairie Parkway?

A. I did.

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Q. Why did you go there?

A. I was directed there by Detective Swiercz.

Q. And did you go to Apartment G?

A. I eventually did, yes.

Q. All right. Prior to that, did you observe a vehicle out in front of that apartment?

A. Yes, I did.

Q. What type of vehicle?

A. Black-colored Mercury four-door.

Q. What was the significance of that; that it was a black Mercury four-door?

A. The significance of that to me was a couple things. It was a black four-door which was described by Mr. Isaacson. He was not aware of a make or model, but stated that he thought the subject arrived in a black car. And he was positive that the first three letters on the license plate were BDR -- Boy, David, Robert. And he also told me he thought there were a couple --

MS. FOSTER: Again, your Honor, I'd object.

MR. BRAMBLE: Hold on. I --

THE WITNESS: -- zeros on the --

THE COURT: Hold on, hold on.

MR. BRAMBLE: I'm asking him why he focused in on this particular vehicle. Not for the truth of the matter asserted, but just why he focused.

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1 BY MR. BRAMBLE:
2 Q. And you said BDR?
3 A. **Correct. Was first three letters I observed on the plate**
4 **that was in this parking lot at that time. That was**
5 **significant to me because I was told that was the first**
6 **three letters of the plate believed to be the suspect's**
7 **vehicle.**

8 Q. Again, what were the first three letters?

9 A. **BDR, as in B, Boy; D, David; R, Robert.**

10 Q. You indicated Mr. Isaacson told you there were a couple
11 zeros in the license plate?

12 A. **Mr. Isaacson stated he also thought there was a couple**
13 **zeros.**

14 Q. Were there a couple zeros in this license plate?

15 A. **There were.**

16 Q. Once you get this information, do you approach 1833 Prairie
17 Parkway?

18 A. **Yes. We --**

19 Q. Apartment G?

20 A. **Apartment G; correct.**

21 Q. And did you get to the front door?

22 A. **I never made it to the front door. I was headed towards the**
23 **front door; Officer Ferguson was headed around the back**
24 **door. And we also called for additional units to assist.**
25

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1 **Prior to even making it to the front door, other officers**
2 **were arriving. You could hear there was commotion at the**
3 **back door where Officer Ferguson was. So, I immediately**
4 **responded around to the back door.**
5 Q. When you got there, did you see what Officer Ferguson was --
6 what he was doing?
7 A. **Officer Ferguson was detaining a subject at the back door**
8 **and attempting to secure him in handcuffs. That's what I**
9 **saw. Then I did speak to Officer Ferguson to understand why**
10 **he was doing such.**

11 Q. The person he's detaining, is he present here in the
12 courtroom?

13 A. **Yes.**

14 Q. And when he detained him, did you talk to the suspect then?

15 A. **Not right then. We were dealing with probably four or**
16 **five -- if not more -- subjects that were in and out the**
17 **doorway of that back -- that back door. I say the "back**
18 **door" the north door of the residence. There were multiple**
19 **subjects there, so we were securing other people besides the**
20 **subject that Officer Ferguson was detaining.**

21 Q. I'm going to show you what's been admitted as Exhibit 2.
22 Can you identify that picture and, if so, what significance
23 does it have to you?

24 A. **This is a printout of a picture that I saw in Mr. Isaacson's**
25 **phone at the time of his report. He showed me this picture**

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1 on his phone and stated that was his picture he took on his
2 own phone of the suspect who had just robbed him in the

3 **parking lot at Swiss Valley.**

4 Q. What did you tell him to do with that picture?

5 A. **After obtaining that information from Mr. Isaacson, I**
6 **contacted Detective Swiercz, who was at the office. I said,**
7 **"Hey, I think we've got a picture of the suspect here. Can**
8 **we get it to you?" We then sent it from Mr. Isaacson's**
9 **phone to Detective Swiercz's email, his city email at the**
10 **office. And then I watched Mr. Isaacson do that on his**
11 **phone. And within minutes Detective Swiercz called me on my**
12 **work cell phone, saying he had received the photo.**

13 MR. BRAMBLE: (Confers with detective). Nothing
14 further at this time, your Honor.

15 THE COURT: Ms. Foster.

16 MS. FOSTER: (Confers with client). I have
17 nothing to ask of this witness, your Honor. Thank you.

18 THE COURT: Thank you very much. You are excused.

19 (At 2:16 p.m., witness stepped down)

20 MR. BRAMBLE: Your Honor, I'm waiting, I'll put
21 Officer Swiercz on.

22 THE COURT: Sure. State your full name, please.

23 MR. SWIERCZ: Philip Swiercz.

24 THE COURT: Do you solemnly swear or affirm that
25 the testimony you're about to give in this matter will be

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1 the truth, the whole truth, and nothing but the truth, so
2 help you God?

3 MR. SWIERCZ: Yes.

4 THE COURT: Please be seated.

5 PHILIP SWIERCZ,
6 called by the People at 2:17 p.m., sworn by the Court,
7 testified:

8 DIRECT EXAMINATION

9 BY MR. BRAMBLE:

10 Q. Sir, you are employed?

11 A. **Correct.**

12 Q. Where are you employed?

13 A. **City of Wyoming.**

14 Q. What capacity are you employed there?

15 A. **Detective.**

16 Q. How long have you been in the Detective Bureau?

17 A. **April will be one year. So...**

18 Q. Prior to that were you working with the Wyoming Police
19 Department?

20 A. **Yes.**

21 Q. How long have you worked with the Wyoming Police Department
22 as a police officer in total?

23 A. **Eleven years.**

24 Q. Prior to joining the Wyoming Police Department, did you --
25 were you employed by any other law enforcement agency?

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1 A. No.
2 Q. Can you describe for this jury how it opened to get
3 assigned cases when you're in the Detective Bureau?
4 A. Well, road parole will initially take the original
5 complaints. They are all sent up to the supervisors. They
6 review the reports and they decide if the report is worthy
7 of further investigation. Then they -- you know, we all
8 kind of have our own niche. If cases are related, like if
9 there's seven B & Es in one area, you'll work, usually, all
10 seven of those. It just depends on what the sergeants want
11 to do.
12 Q. Were you assigned the robbery that was involved with
13 Mr. Gray on November 14 of 2011?
14 A. I was.
15 Q. You get all the reports that were generated as a result of
16 that investigation?
17 A. I do.
18 Q. You talk to witnesses, as well?
19 A. I only talk to the victim. I believe he was the only other
20 party involved.
21 Q. That would have been Mr. Gray?
22 A. Correct.
23 Q. Did you have any suspects then?
24 A. No. We just had the description that he provided us.
25 Q. Were you working on November 29 of -- excuse me, November 29

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1 of 2011?
2 A. I was.
3 Q. At some point in time do you -- are you made aware of the
4 fact that there's been another armed robbery in the Swiss
5 Valley Apartment -- or unarmed robbery?
6 A. I am.
7 Q. And tell the jury, did it click regarding this one on
8 November 14?
9 A. It did. I was just -- I remember the date. I was just
10 getting out of my detective car, and I heard the radio
11 traffic that Officer VerHage was sent to Swiss Valley
12 Apartments regarding a robbery. It clicked almost instantly
13 that, "Hey I got a case that's similar." That's when I made
14 the phone call to him just letting him know because
15 sometimes there's that communication breakdown where the
16 road guys may have not known that an incident like that
17 happened already.
18 Q. All right. Did you obtain information from, at least, what
19 Mr. Isaacson had conveyed to the police officers at that
20 time?
21 A. Yeah. Yep, I was -- yep.
22 Q. I mean, did you note the similarities between the two once
23 you gained the information?
24 A. Yeah. They were similar, just from hearing the dispatch --
25 the information dispatch provided to the reporting road

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1 officers.
2 Q. We just heard from -- or VerHage that you provided him
3 with a name of Kelvin Heath. How did you happen to do that?
4 A. Well, all of our communication was on our work cell phones.
5 Once he arrived on-scene he was able to obtain suspect's
6 phone number, which I was able to relay to dispatch, saying,
7 "Hey we have this phone number. Can -- we call it -- can
8 you 'ping' it, enter it and see who the owner of that phone
9 is and like what cell towers it's hitting off of?"
10 So dispatch was able to help me with that. In
11 return, they provided me the general area and the owner of
12 that phone number, which came back to Kelvin Heath.
13 Q. Do you remember what that phone number was?
14 A. I believe it was 616.477 -- I mean, I don't recall the
15 number exactly.
16 MR. BRAMBLE: May I approach, your Honor?
17 THE COURT: Yes.
18 BY MR. BRAMBLE:
19 Q. Showing you what's been marked as Exhibit 1. You said
20 "616.477" --
21 A. Yeah. This -- yep -- "1333." There's two numbers involved,
22 and I believe this was the one that we pinged.
23 Q. That's the same one that appears on Exhibit 1 with the ad at
24 backpage.com?
25 A. Yeah, yep.

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1 Q. Do you get a photograph of -- that was texted over to you,
2 if that's the right way --
3 A. I do. It's Mr. Isaacson has a smartphone. He was able to
4 email it to my work email. I was able to print it off on a
5 -- on a piece of paper -- 8 x 11 piece of paper.
6 Q. I show you what's marked as Exhibit 2. Is this the
7 photograph that Mr. Isaacson sent to you?
8 A. Yes.
9 Q. Did you obtain another photograph of Kelvin Heath?
10 A. I did. I -- after obtaining the name Kelvin Heath, I was
11 able to do a Secretary of State -- SOS -- check and a jail
12 mug.
13 Q. Did you get a photograph of him?
14 A. I did.
15 Q. Did you compare that to Exhibit 2?
16 A. I did.
17 Q. And did you believe them to be one in the same person?
18 A. I did.
19 Q. Did you go to the scene?
20 A. I did.
21 Q. And did you go to 1833 Prairie Parkway?
22 A. Yes.
23 Q. Did you go into the residence there?
24 A. I did.
25 Q. Who allowed you to go into the residence there?

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1 A. Eleanor -- Eleanor Griffin, I believe her name is.
2 Q. Is she any relation to the defendant?
3 A. **She stated she was his mother.**
4 Q. Did you seize any items inside that apartment?
5 A. **Yes, I did.**
6 Q. What did you seize, please?
7 A. **One blue Polo shirt, light blue. I'd call it a baby blue.**
8 Q. I show you what's marked as proposed Exhibit 6 and ask if
9 you can identify that?
10 A. **Yes. This is the shirt I --**
11 Q. Can you tell me, Detective, why did you -- of what
12 significance was proposed Exhibit 6?
13 A. **That was -- that shirt is -- was very similar to the shirt**
14 **that was in the photograph that was emailed to me.**
15 MR. BRAMBLE: Your Honor, I'm going to move for
16 admission of People's Proposed Exhibit 6 at this time.
17 MS. FOSTER: No objection.
18 THE COURT: Admitted.
19 (People's Exhibit 6 admitted)
20 BY MR. BRAMBLE:
21 Q. Now, prior to this date, had you received any information
22 that there was a massage or adult services business being
23 run out of any of these apartments at Swiss Valley?
24 A. **No.**
25 Q. Did you take a statement from the defendant?

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1 A. **I did.**
2 Q. Where were you when you took the statement from him?
3 A. **We were in the parking lot of the Prairie Parkway address.**
4 Q. And were you aware whether or not the defendant had been
5 advised of his Miranda rights?
6 A. **Yes. I confirmed with Officer Denny Ferguson that he was**
7 **already advised of his Miranda rights.**
8 Q. Did you ask the defendant whether or not he wanted to speak
9 with you?
10 A. **I did.**
11 Q. Is that person, who I'm referring to as the "defendant" that
12 you spoke to on that day, present here in the courtroom?
13 A. **Yes, he is.**
14 Q. Can you point out where he's seated?
15 A. **Sitting at that table with the white button shirt**
16 **(indicating).**
17 MR. BRAMBLE: Your Honor, may the record reflect
18 the identification of the defendant?
19 THE COURT: Yes.
20 BY MR. BRAMBLE:
21 Q. Did you advise the defendant that he was in custody for
22 robbery and impersonation of a police officer?
23 A. **I did.**
24 Q. How did he react?
25 A. **He wasn't really surprised by this.**

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1 Q. Did you ask him why he was at the Swiss Valley Apartments?
2 A. **I did.**
3 Q. How did the defendant respond?
4 A. **He stated that he was just driving through, turning around.**
5 Q. Did he indicate whether or not he had an exchange with a
6 person in that parking lot?
7 A. **He did. He stated that there was an unknown male to him**
8 **that he believed was telling him to fuck off.**
9 Q. Did you ask him to explain further?
10 A. **I did, and he was unable to.**
11 Q. Did you ask him why would this person be telling him to fuck
12 off, to use his language?
13 A. **I did. I tried to get him to elaborate more on that, and he**
14 **really didn't have any explanation for that.**
15 Q. Did the defendant's demeanor change as you questioned him?
16 A. **Yeah. You could tell he was, you know -- he was not pleased**
17 **that he was under arrest and that I was asking questions**
18 **about it.**
19 Q. Did you ask the defendant whether he was driving the Mercury
20 Sable described by Officer VerHage?
21 A. **I did.**
22 Q. How did the defendant respond?
23 A. **He said he was. He said he did drive it.**
24 Q. Did you ask him about the blue Polo shirt the defendant was
25 wearing in Exhibit 2?

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1 A. **I did. He -- he stated he didn't know anything about it.**
2 Q. Did you ask him why someone took his picture at the Swiss
3 Valley apartments?
4 A. **I did.**
5 Q. What did he indicate?
6 A. **He didn't know anything about it.**
7 Q. Did you question the defendant why the victim, Mr. Isaacson,
8 had his cell phone number?
9 A. **I believe I did.**
10 Q. How did the defendant respond?
11 A. **He didn't know anything about it.**
12 Q. Did the interview end shortly after that?
13 A. **It did.**
14 MR. BRAMBLE: I don't think I have anything
15 further at this time, your Honor.
16 THE COURT: Ms. Foster.
17 MS. FOSTER: Yes, your Honor.
18 **CROSS-EXAMINATION**
19 BY MS. FOSTER:
20 Q. Good afternoon -- is it Detective Swiercz?
21 A. **Swiercz, yep.**
22 Q. I didn't want to mispronounce it. Now, you were obviously
23 made familiar -- you've sat through this entire time -- and
24 you were made familiar -- you became familiar with the case
25 during the course of the investigation; is that a fair

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statement?

1 **Q.** Yeah.
2 **A.** **Yeah.**
3 **Q.** From the first allegation on the 14th of November, by
4 Mr. Gray. Were you aware of it then, or no? Did you come
5 up --
6 **A.** **I was aware of his incident, yeah.**
7 **Q.** Okay. So you were aware of both incidences. Do you have
8 any knowledge as to whether or not there were any similar
9 incidences either before the 14th or after the 29th of
10 November?
11 **A.** **I don't. I did kind of -- I looked into that, and we didn't**
12 **have any, you know, similar incidences at that location.**
13 **Q.** Okay. Any others in the general vicinity of Prairie
14 Parkway, or Burlingame, or in Wyoming at all?
15 **A.** **None in Wyoming.**
16 **Q.** Did you look outside of the Wyoming city limits to see if
17 there were any similar incidences in say Kentwood or Grand
18 Rapids, Grandville, anywhere else?
19 **A.** **No. I didn't make any phone calls.**
20 **Q.** Okay. You were aware of -- from reading -- I'm assuming you
21 read the narrative from the officers who interviewed both
22 alleged victims; is that a fair statement?
23 **A.** **Yes.**
24 **Q.** And you were made aware of the fact that both alleged
25 victims gave bogus accounts as to why they were in the

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1 vicinity at first; is that a fair statement?
2 **A.** **Yes.**
3 **Q.** Okay. And obviously after reviewing -- you had an
4 opportunity to review the backpage.com ads that both
5 individuals responded to; correct?
6 **A.** **I did.**
7 **Q.** You've been in law enforcement for you said 11 years?
8 **A.** **Correct.**
9 **Q.** How familiar are you with backpage.com?
10 **A.** **That's the first I've heard of it.**
11 **Q.** That was the first you've heard of it, in this case?
12 **A.** **Investigating these incidences.**
13 **Q.** Have you become more familiar with it since?
14 **A.** **No. I just was able to make reference to those ads during**
15 **the investigation.**
16 **Q.** Okay. Now, you indicated that you interviewed Mr. Heath and
17 he denied knowing -- having any connection with Mr. Isaacson
18 other than Mr. Isaacson yelled expletives at him from a
19 vehicle. That pretty much sums it up?
20 **A.** **He described him as an unknown male to him.**
21 **Q.** Did he ever acknowledge having any particular contact
22 whatsoever or any contact whatsoever with Mr. Gray?
23 **A.** **No.**
24 **Q.** Did you ask him about Mr. Gray?
25 **A.** **I did.**

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1 **Q.** Okay.
2 **MS. FOSTER:** Excuse me (confers with client).

3 **BY MS. FOSTER:**
4 **Q.** Other than Mr. Heath, was there anybody else in relation to
5 this investigation you spoke with outside of law
6 enforcement?
7 **A.** **Are you talking about --**
8 **Q.** Let's say outside of law enforcement and the two alleged
9 victims and my client, was there anybody else you
10 interviewed in relationship to this case, any other lay
11 witnesses?
12 **A.** **I talked to Eleanor.**
13 **Q.** The mom?
14 **A.** **Yeah.**
15 **Q.** Okay. But I'm talking about anybody at the Swiss Valley
16 Apartments, anybody over there. Were you able to interview
17 anybody over there, anybody come forward indicating they saw
18 anything?
19 **A.** **No, they did not.**
20 **Q.** Okay.
21 **MS. FOSTER:** (Confers with client)
22 **BY MS. FOSTER:**
23 **Q.** There was an -- I believe that the last individual who
24 testified, Officer VerHage, indicated there were other
25 individuals at the mom's apartment.

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1 **A.** **Correct.**
2 **Q.** Did you have any contact with those individuals?
3 **A.** **I did, but just passing. I think one or two of them were**
4 **taken into custody for other related warrants.**
5 **Q.** Related to this or --
6 **A.** **Unrelated to this.**
7 **Q.** Unrelated. Okay.
8 **A.** **Yeah.**
9 **Q.** But you did not actually have a conversation or interview
10 them in relation to this matter?
11 **A.** **Only Eleanor.**
12 **Q.** Eleanor. Okay.
13 **MS. FOSTER:** (Confers with client)
14 **BY MS. FOSTER:**
15 **Q.** Okay. Only a couple more questions, Detective Swiercz.
16 Were you the one who actually arrested Mr. Heath?
17 **A.** **I was not.**
18 **Q.** Okay. When you interviewed him, were you -- was he already
19 in police custody? Was it at the -- when you had this
20 interview you described in direct testimony, was he already
21 at the police department or was he still at the apartment
22 complex?
23 **A.** **We were still in the parking lot.**
24 **Q.** So, was he in custody? Was he --
25 **A.** **Yeah, he was in custody; handcuffed.**

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1 Q. Handcuffed.
2 A. In the cruiser of Officer Ferguson.
3 Q. He was in Officer Ferguson's cruiser?
4 A. Yes.
5 Q. Was Officer Ferguson in the cruiser with him?
6 A. He was. And I think when I was talking to him, maybe he
7 stepped outside his car.
8 Q. Okay. And I'm assuming you were sitting in the front, as
9 well?
10 A. Nope. I just opened the rear passenger door, just kind of
11 leaned in and talked to him.
12 Q. Oh, okay. So, you didn't get in the vehicle? You weren't
13 talking to him from inside the vehicle?
14 A. No.
15 Q. Okay. Are there incamera cameras; video cameras in these
16 cruisers?
17 A. Not -- we're in transition at this time. There's no audio
18 video.
19 Q. Were there other individuals in the cruiser with Mr. Heath?
20 Was he alone or was there other individuals in the cruiser
21 with him?
22 A. I believe he was alone.
23 Q. Are you sure about that?
24 A. I'm not sure but -- because there was, like I said, other
25 people in cars.

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1 Q. Right.
2 A. I don't think he was with anyone else.
3 MS. FOSTER: (Confers with client). I have
4 nothing further, your Honor.
5 THE COURT: Mr. Bramble?
6 MR. BRAMBLE: Follow up here.
7 REDIRECT EXAMINATION
8 BY MR. BRAMBLE:
9 Q. Detective, were you present when Mr. Gray was present at the
10 lineup?
11 A. I was.
12 Q. And I'm going to show you what's marked as Exhibit 4. Does
13 this picture, the bottom picture, indicate the physical
14 lineup that you guys view?
15 A. Yes, it does.
16 Q. All right. And the defendant is in position five?
17 A. Correct.
18 Q. And Exhibit 5, Mr. Gray's name on it, showing he picked
19 number five. Does your signature appear on there, as well?
20 A. It does.
21 Q. Did Mr. Gray hesitate at all when he picked number five?
22 A. He did not.
23 Q. Lastly, the phone records you obtained and the phone numbers
24 you obtained, what did you do with them, defendant's phone
25 numbers?

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1 A. I obtained a court order to get the phone records.
2 Q. Did you get those records?
3 A. I did.
4 Q. And were these phones -- how many phones were listed to the
5 defendant or in the defendant's name?
6 A. One phone was in his name and the other phone I believe had
7 -- I would have to look at the record. But some phones,
8 like if they're a Metro or a Boost, they just have -- they
9 don't have an owner. Some phones you don't even have to
10 register in your name.
11 Q. Explain to the jury what a Boost phone is?
12 A. I think you buy them at gas stations or other cell phone
13 providers. You pay like a \$30 phone card. And when that
14 runs out, you just keep putting minutes on it.
15 Q. So if -- you don't have to sign up like most of us do and
16 give your name?
17 A. Yeah. There's no contracts. No.
18 Q. What did your investigation of the phone that was listed as
19 the defendant's phone, what did that reveal?
20 A. It just confirmed that the defendant's phone was
21 communicating with our victim phones.
22 Q. That would be both victims?
23 A. Yes.
24 MR. BRAMBLE: I don't believe I have anything
25 further.

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1 THE COURT: Ms. Foster?
2 MS. FOSTER: One of the -- thank you, your Honor.
3 RECROSS-EXAMINATION
4 BY MS. FOSTER:
5 Q. One of the phones had an out-of-state area code. Were you
6 able to ascertain who that phone was connected to?
7 A. No. That comes back to just an address, I think, in
8 Missouri.
9 Q. Okay.
10 A. Yep.
11 MS. FOSTER: I don't have anything further, your
12 Honor. Thank you.
13 THE COURT: Mr. Bramble?
14 MR. BRAMBLE: Nothing further at this time, your
15 Honor.
16 THE COURT: You may step down.
17 (At 2:39 p.m., witness stepped down)
18 MR. BRAMBLE: At this time the State would call
19 Officer Ferguson.
20 THE COURT: State your full name, please.
21 MR. FERGUSON: Dennis Ferguson.
22 THE COURT: Do you solemnly swear or affirm that
23 the testimony you're about to give in this cause will be the
24 truth, the whole truth, and nothing but the truth, so help
25 you God?

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MR. FERGUSON: Yes, I do.

THE COURT: Please be se

DENNIS FERGUSON,

called by the People at 2:39 p.m., sworn by the Court,
testified:

DIRECT EXAMINATION

BY MR. BRAMBLE:

Q. Would you state your full name and spell your last name,
please?

A. **Dennis Ferguson, F-E-R-G-U-S-O-N.**

Q. Are you employed, sir?

A. **Yes.**

Q. Where are you employed?

A. **City of Wyoming Police Department.**

Q. How long have you been employed there?

A. **Nearly 15 years.**

Q. Where are you currently assigned within that department?

A. **Patrol officer.**

Q. What shift do you work?

A. **Day shift; 6:00 a.m. to 4:00 p.m.**

Q. Were you working in that capacity on or about November 29 of
2011?

A. **Yes.**

Q. Did you get called to 1833 Prairie Parkway, Apartment G?

A. **Yes.**

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of the back sliding glass door. Did you detain this person?

A. **He did.**

Q. Is that person present here in the courtroom?

A. **Yes, he is.**

Q. Could you point out where he's seated and what he's wearing?

A. **He's wearing a, I believe, cream-colored button-up shirt at
the table to your left there.**

MR. BRAMBLE: Your Honor, may the record reflect
the identification of the defendant?

THE COURT: Yes.

BY MR. BRAMBLE:

Q. Did you place the defendant in handcuffs at the time?

A. **I did.**

Q. Was that as much for your safety as to kind of figure out
what was going on?

A. **Absolutely.**

Q. All right. Prior to placing him in your cruiser, did you
empty out his pockets?

A. **Yes.**

Q. Can you tell this jury what you found?

A. **I'll refer to my notes here, if you will.**

Q. Will that refresh your recollection?

A. **Yep. In his left front pocket I located a white and
silver -- a Boost Mobile Qualcomm cell phone identical to
the one in the picture that you just showed, as well as a**

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Q. Why were you dispatched or why did you go there?

A. **Officer VerHage was taking a complaint from a victim and had
information that the suspect may be at that address.**

Q. Did you go there?

A. **Yes.**

Q. And did you get to the front door?

A. **No.**

Q. Where did you go?

A. **I went to the back door.**

Q. All right. And what did you observe eventually when you
were there at the back door?

A. **I was on northeast corner watching the east and the north
sides. There was only two of us there at the time.
Officer VerHage was making contact with the front door, so I
covered the rear side. And I saw an individual starting to
exit out the bottom-left apartment slider door. So, I went
down there to make contact with that individual.**

**I visually ID him as a potential suspect in the
case because, prior to me going there, the suspect had taken
a picture -- I'm sorry -- the victim had taken a picture of
the suspect with his phone. So, I knew what to look for as
in what the suspect looked like.**

Q. The picture you are referring to would be Exhibit 2?

A. **Yes.**

Q. You looked at the picture; looked at the person coming out

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black cell phone and a set of keys.

**In his right front pocket I located 12 Daily 4
Lottery tickets -- Lotto tickets -- \$497 in cash; a stack of
miscellaneous cards, which included his Michigan ID card as
well as a miscellaneous piece of paper. I believe that was
it.**

Q. I'm going to show you two items here that are marked
Proposed Exhibit 7 and 8. I'll ask if you can identify
these items.

A. **Okay. This was the black cell phone in his pocket that was
turned off, and that was Exhibit 8. Exhibit 7 is the silver
and white cell phone that was in his pocket.**

Q. Okay. Let me get you then -- you indicated you found how
much money in his pocket?

A. **I found \$497.**

Q. I show you what's marked as Exhibit 9. If you need to open
it to -- what that item is?

A. **This is the cash that I found in his pocket that I turned in
to our technical support unit as evidence. And I sealed it.**

Q. Did you check the defendant's cell phone?

A. **I did, yes.**

Q. And the one that was operating, not the one that was shut
off?

A. **The white and silver one I checked; it was on.**

Q. Why did you focus on the silver one?

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1 A. That was in the picture that the victim provided us.
 2 Q. All right. And what were you looking for, his silver
 3 phone?
 4 A. Specifically, some kind of evidence of correspondence
 5 between the suspect and victim to solidify the case.
 6 Q. Did you find a phone number on there that helped solidify
 7 the case?
 8 A. Yes. I conversed with Officer VerHage and was able to
 9 obtain the victim's cell phone number and I found that same
 10 number in the suspect's phone that he had called.
 11 Q. That number is -- is that the 847 number?
 12 A. Yes.
 13 Q. It's 847.370.4339?
 14 A. Yes.
 15 Q. Once you got this information, did you place the defendant
 16 under arrest?
 17 A. Yes.
 18 Q. Did you advise him of his Miranda rights?
 19 A. Yes.
 20 Q. Did he agree to talk to you?
 21 A. Yes.
 22 Q. Initially -- let me ask you this just as a broader question.
 23 Did his story or his version of what went on remain
 24 consistent or did it change?
 25 A. It -- it constantly changed.

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1 Q. All right. What did he tell you at first; where he was that
 2 day?
 3 A. He said he was home all day, with the exception at 12:45 he
 4 drove his daughter to Mel Trotter because she had bought a
 5 car from them and was having troubles with the car and
 6 wanted her dad to go down there with him to help her
 7 straighten out the car problems.
 8 He said he dropped her off and returned home,
 9 arriving back home about 1:45. So, he was gone about an
 10 hour.
 11 Q. Did you ever ask him if he was at the Swiss Valley parking
 12 lot?
 13 A. Yes, he said he was. He said that when he returned home
 14 from Mel Trotter, he pulled into the lot to turn around and
 15 he said he went back out.
 16 Q. Did you ask him if he encountered anyone in that lot?
 17 A. The first time I asked him he said he didn't encounter
 18 anyone in there. He did not encounter anyone in there the
 19 first time I spoke with him or asked him.
 20 Q. So initially he denies encountering anyone in the Swiss
 21 Valley parking lot?
 22 A. Yes.
 23 Q. Did you ask him who the two cell phones belonged to that
 24 were in his pocket?
 25 A. Yes.

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1 Q. How did he respond?
 2 A. He said they were his.
 3 Q. Did you ask him if anyone else had access to them?
 4 A. Yes.
 5 Q. How did he respond?
 6 A. He first said no one else had access to them but him.
 7 Q. Did he change that version?
 8 A. Yes.
 9 Q. What did he say?
 10 A. He said a friend of his named Sheila was with him around
 11 1:30 and that she may have used one of his phones.
 12 Q. Did you ask him where she came from and where did she go?
 13 A. Yes.
 14 Q. How did the defendant respond, or did he respond?
 15 A. He did not respond.
 16 Q. Did the defendant change his story then, again, about where
 17 he was?
 18 A. Not so much about where he was, but the circumstances of
 19 where he went, with whom and stuff.
 20 Q. Can you outline this for us?
 21 A. When I asked him about this Sheila girl that used his phone
 22 and how she got involved in it -- because from 12:45 to 1:45
 23 he said he was just with his daughter -- he said his
 24 daughter then drove him down to Mel Trotter with a cousin
 25 named Booter -- didn't have a name for her, he just said her

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1 name was Booter -- to get her car looked at. And then the
 2 three of them returned home, but none of the officers that
 3 were on-scene ever located his daughter or a female by the
 4 name of Booter.
 5 Q. All right. Did the defendant eventually admit to you that
 6 he went through the Swiss Valley parking lot?
 7 A. Yes.
 8 Q. What did he say happened in that parking lot?
 9 A. He said he drove through the Swiss Valley parking lot and he
 10 said a white or Hispanic guy yelled mother-fucker something
 11 at him when he was driving through the lot. He said they
 12 were going in opposite directions.
 13 Q. Did he indicate whether or not he got out of his car?
 14 A. He said he never got -- he said he never got out of his car.
 15 Q. Did the defendant later talk about directions or someone --
 16 this person asking for directions?
 17 A. He -- he made some kind of statement about maybe the guy was
 18 asking for directions.
 19 Q. Did you say something in response to that or question him?
 20 A. Well, I asked him why he would stop and -- or at least kind
 21 of entertained the idea of talking to the guy if he just
 22 called him a mother-fucker as he drove by each other and he
 23 didn't say anything; he just stayed silent.
 24 Q. Why would this person who called him a mother-fucker then
 25 ask him for directions?

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1 A. **That's what I asked him and he didn't have an answer. It**
2 **didn't make sense.**
3 Q. Did you ask him why the victim, Mr. Isaacson's, cell phone
4 number was on his phone?
5 A. **Yes.**
6 Q. How did he respond?
7 A. **Sheila must have called it.**
8 Q. Did you point out an inconsistency with the story regarding
9 Sheila and --
10 A. **I -- yeah. I asked him how would Sheila have this victim's**
11 **phone number to call, and he didn't have an answer.**
12 Q. The items that you identified, the money and the phones,
13 what did you do with them?
14 A. **I turned them into our technical support unit or evidence**
15 **and secured them in a locker.**
16 Q. Is that an area for safekeeping for articles of evidence?
17 A. **Yeah. That's where we turn all of our evidence in. It's in**
18 **a locked locker with a lock.**
19 Q. To your knowledge, has anyone tampered with any of those
20 things?
21 A. **No. It's my signature over the seal. It's my -- this is**
22 **how I remember sealing them.**
23 MR. BRAMBLE: I don't think I have anything
24 further at this time, your Honor.
25 THE COURT: Ms. Foster?

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1 **CROSS-EXAMINATION**
2 **BY MS. FOSTER:**
3 Q. Did Mister -- good afternoon. I'm sorry, Officer Ferguson.
4 A. **Good afternoon.**
5 Q. Did Mr. Heath ever explain to him how he got this money?
6 Did you ask him about it?
7 A. **I don't remember him telling me how he came about the money.**
8 Q. You don't remember asking him about it? Would it be in your
9 notes if you had asked?
10 A. **I don't have it in the report, so I don't remember how the**
11 **conversation about the money was.**
12 Q. If you had asked him and he responded, would that have made
13 it into your report?
14 A. **Yes.**
15 Q. So, is it a fair statement that, since there's nothing in
16 your report reflecting that, you probably didn't ask him
17 about the money?
18 A. **Correct.**
19 Q. Excuse me, Officer.
20 MS. FOSTER: (Confers with client)
21 **BY MS. FOSTER:**
22 Q. There was an indication that there were other individuals at
23 this apartment complex. Is that --
24 MS. FOSTER: Apparently you were apprehended that
25 same day?

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1 **BY MS. FOSTER:**
2 Q. Do you recall that?
3 A. **Mr. Heath came out of the apartment. I took him into**
4 **protective custody for myself because there were multiple**
5 **people inside the apartment. I believe they were taken into**
6 **protective custody, as well, until we sorted everything out.**
7 **I was back there by myself and there was five people**
8 **approaching the door at the same time. So, we just kind of**
9 **secured the scene, as is common practice.**
10 Q. Do you remember the gender of these individuals? Were they
11 both males and females?
12 A. **I only saw males.**
13 Q. You only saw males. Okay. And at some point is it true
14 that Mr. Heath was in your cruiser?
15 A. **Yes.**
16 Q. Were you the one that transported him to the county jail?
17 A. **Yes.**
18 Q. Was there anybody else in the cruiser with him?
19 A. **No.**
20 Q. At any point was there ever anybody else in the cruiser with
21 him besides you?
22 A. **When you say "anyone else" --**
23 Q. Any other suspects, any other individuals taking a little
24 ride to the county jail with him?
25 A. **No. A couple of officers spoke with him as I opened the**

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1 **door. But no one else sat physically in the car besides him**
2 **and I, if that's what you're asking.**
3 Q. Okay. Do you know if other individuals were arrested that
4 day?
5 A. **It -- involved in this case?**
6 Q. Not particularly involved in this incident, but were there
7 other individuals arrested that day on maybe warrants or
8 anything else? Were there other individuals that were taken
9 to the county jail or put in the cruiser from that day from
10 that apartment, if you know?
11 A. **I don't know that. I don't know the answer.**
12 Q. You don't know that. Okay.
13 MS. FOSTER: Excuse me (confers with client). I
14 have nothing further, your Honor.
15 THE COURT: All right.
16 MR. BRAMBLE: Nothing further.
17 THE COURT: You are excused. Thank you.
18 (At 2:55 p.m., witness stepped down)
19 MR. BRAMBLE: At this time I would move for
20 admission of 6, 7, 8 and 9.
21 MS. FOSTER: May I, your Honor?
22 THE COURT: Yes.
23 MR. BRAMBLE: I'll publish to defense counsel.
24 MS. FOSTER: (Reviewing) no objection.
25 THE COURT: Admitted.

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(People's Exhibits 6-9 admitted)

MR. BRAMBLE: Your Honor, this time the State

would rest.

THE COURT: Ms. Foster -- we'll take a 15-minute recess at this point. You may go back.

(At 2:56 p.m., jury exits courtroom)

THE COURT: Everybody can be seated.

Ms. Foster, you wanted to put something on the record regarding reading the transcript?

MS. FOSTER: Yes, your Honor. There were a couple of matters I would like to place on the record before I do my directed verdict motion.

The first thing I'd like to discuss is the issue of the absence of the victim, Mr. Isaacson. I was told this morning that Mr. Isaacson would not be here because he was contacted -- apparently the information that was provided to me was that there were several messages left at his last known cell phone and that he had not returned any phone calls. But apparently there was some phone contact made with him, and he indicated he just wasn't going to come.

Your Honor, my client is entitled to a confrontation of witnesses against him and the prosecution has a due diligence responsibility to try to procure witnesses and especially victims. Mr. Isaacson doesn't live in Guatemala; he doesn't live in Australia; he lives in Illinois, which is

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not far from here.

I do believe that, given the length of time from the time that we had the preliminary examination -- which was back in December of last year -- and now, a good-faith effort could have been made on the part of the prosecution to ensure that this gentleman was present, instead of having us read his testimony into the record today in this trial.

I say that because, although I do believe I did a fair amount of cross-examination, some additional information has come to light since then that I would have loved to have been able to cross-examine Mr. Isaacson on and cannot now because he's not here. So, based on that, my client has not been afforded his due process right to confront witnesses against him.

Based on that, your Honor, we would ask that this Court grant our request for a mistrial based on that argument, your Honor. Thank you.

THE COURT: Mr. Bramble?

MR. BRAMBLE: Your Honor, as this Court has already noted, the December 14, 2011 preliminary examination that we used in lieu of live testimony, at that preliminary exam it was noted on the record that this preliminary exam was being taken or being run and testimony taken because we wanted to preserve Mr. Isaacson's testimony. The reason we did that is because Mr. Isaacson was less than cooperative

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then, and we wanted to make sure we had him on the record. The defense had a chance to cross-examine and did

cross-examine Mr. Isaacson. So, they've had that face-to-face confrontation.

Regarding our efforts to procure his presence here today, we did send out a subpoena to him. He did receive it. We made numerous calls to him and didn't get any response until today. Today he told Rita Caruth -- our victim advocate -- that he was not going to appear today; he would not appear at all. And so we -- you know, we've subpoenaed him; he's received his subpoena. He simply isn't honoring that subpoena. So, I think he was made unavailable and using the testimony from the preliminary exam was appropriate.

THE COURT: Ms. Foster, I note as part of that preliminary examination transcript you stated, I think, the main reason for taking this other gentleman's testimony was to preserve it because he doesn't live in state. So certainly it was contemplated that there may be a problem, and that was perceptive; correct?

MS. FOSTER: I don't disagree with that, your Honor, but that's -- that matter -- that manner and testimony is often done. We -- it happens a lot in domestic violence cases. They're afraid a victim may recant down the road, so they take her testimony -- and I say "her" because

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it's usually a her -- at the preliminary examination to preserve it.

But I still argue, your Honor, that the prosecution shouldn't just throw his hands up and say, "Oh, well, he's decided he's not going to show, so we'll just proceed without him." There should at least be a due diligent effort to procure that individual here for testimony. I could understand it if we were talking about somebody who was an illegal and had went back to Mexico or was from out of the country. We're talking about a guy that's less than two hours away.

If he'd have been in the state, I imagine the prosecution would have gotten a material witness warrant and gotten him here. If he's that valuable of a witness -- and this is the most valuable of a witness because this is an actual alleged victim -- there is nothing that prevents the prosecution from being duty-bound in an effort to get that individual here to testify live.

If there was an issue of distance, I don't think that the State of Illinois -- we're not talking about extradition here -- I don't think the State of Illinois would have told the prosecutor's office, "No. He lives in our state; you can't have him." That's -- I don't believe that would have been an issue. I think that it was a last-minute effort to get him here. He said he wasn't going to

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1 be here and now, you know, he -- we met -- the prosecution
 2 gets the advantage of his earlier testimony and we're at a
 3 disadvantage because I'm left only with my earlier
 4 cross-examination, nothing fresh to ask him because he's not
 5 here. And he's not here because of me or because of
 6 anything I've done. He's not here because he just doesn't
 7 think he needs to be here. I just don't think that's reason
 8 enough for him not to be here. Thank you.

9 THE COURT: Anything further on that, Mr. Bramble?

10 MR. BRAMBLE: Just real briefly. He is a
 11 traveling salesman, and he did not advise Ms. Caruth of
 12 where he was located. So, to assume he was in the State of
 13 Illinois is just that; an assumption.

14 THE COURT: All right. Well, he is unavailable in
 15 this Court's opinion. It was proper to allow the reading of
 16 the preliminary examination transcript to be read in lieu of
 17 his live testimony.

18 Anything else, Ms. Foster?

19 MS. FOSTER: Your Honor, at this time I would ask
 20 the Court to consider our motion for directed verdict. I
 21 know that the Court has now heard all of the prosecution's
 22 case-in-chief and I know that the Court has to decide in a
 23 light most favorable to the prosecution. But we would
 24 submit, your Honor, that there is credibility issues as to
 25 the one witness who did testify. That one witness indicated

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1 that he was accosted by somebody; that he only got a short
 2 look at him. He provided a computer-generated image. This
 3 computer-generated image was based on his verbalizing to the
 4 imaging individual -- whoever does these computer-generated
 5 images -- that this was the gentleman that robbed him. I'm
 6 looking at this photograph or this computer-generated image.
 7 It looks absolutely nothing like my client. In fact, this
 8 individual in this picture looks like a 25-year-old. My
 9 client is 50.

10 In light of that, your Honor, and to kind of
 11 expand upon that, the first -- the victim who -- alleged
 12 victim -- who actually did appear said under oath that he
 13 believed his assailant was his age. My client is at least
 14 15 years older than that gentleman and doesn't really fit
 15 the description other than height. I wouldn't call him
 16 slender. I wouldn't call him 150 pounds. And he indicated
 17 he was -- very short hair and no facial hair, which doesn't
 18 pertain to my client. If you look at the photograph from
 19 the second case, he looks about the same there as he does
 20 today.

21 Going on to the second case, I would argue, your
 22 Honor, that without the actual victim being here and, again,
 23 with us relying on the preliminary exam testimony, I do not
 24 believe, without the ability to cross-examine -- direct
 25 examine and/or cross-examine this second victim, that that

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1 case should be thrown out in its entirety anyway.
 2 Based on the factors outlined, we would ask the
 3 Court to consider my motion for directed verdict and dismiss
 4 this case. Thank you.

5 THE COURT: Mr. Bramble?

6 MR. BRAMBLE: Your Honor, the standard for review
 7 on this motion is pursuant to *People v Hampton*. You have to
 8 view the evidence in a light most favorable to the
 9 non-moving party, in this case, the prosecution. I think
 10 when the Court takes everything in its totality, we've met
 11 our burden here, and I would ask the Court to deny the
 12 motion.

13 THE COURT: Ms. Foster, any response?

14 MS. FOSTER: No, your Honor.

15 THE COURT: Well, the Court has heard the
 16 testimony. Under the *Hampton* case, the evidence viewed in a
 17 light most favorable to the non-moving party -- the
 18 prosecution -- there's certainly ample evidence there, if
 19 believed by the jury, and the jury will decide what it
 20 believes and decide the credibility of the witnesses. So,
 21 sufficient, if believed by the jury, to find beyond a
 22 reasonable doubt that the defendant is, in fact, guilty in
 23 these cases. So, motion is denied.

24 Anything further at this point, Ms. Foster?

25 MS. FOSTER: No, your Honor.

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1 THE COURT: You're ready to proceed with your
 2 case?

3 MS. FOSTER: Well, you know, is that young -- is
 4 Mr. Lewis in the courtroom? Is there a Mr. Lewis in the
 5 courtroom? Okay.

6 Can I have a few minutes, your Honor?

7 THE COURT: Sure.

8 MS. FOSTER: Okay. Thank you.

9 THE COURT: Mr. Bramble, anything further?

10 MR. BRAMBLE: No, your Honor.

11 THE COURT: We're in recess.

12 (At 3:07 p.m., break had)

13 (At 3:26 p.m., jury resumes seats)

14 THE COURT: Be seated.

15 Ms. Foster.

16 MS. FOSTER: The defense calls Kelvin Heath.

17 THE COURT: Stand up please and state your full
 18 name.

19 MR. HEATH: Kelvin Heath.

20 THE COURT: Raise your right hand.

21 Do you solemnly swear or affirm that the testimony
 22 you're about to give in this matter will be the truth, the
 23 whole truth, and nothing but the truth, so help you God?

24 MR. HEATH: I do.

25 THE COURT: Please be seated.

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KELVIN WAYNE HEATH,

testified:

DIRECT EXAMINATION

BY MS. FOSTER:

Q. Once again, can you state your full, true name?

A. **Kelvin Heath. Kelvin Wayne Heath.**

Q. And your date of birth?

A. **3-28-61.**

Q. Where do you reside?

A. **1833 Prairie Parkway.**

Q. How long have you lived there?

A. **Well, comin' out of a divorce situation, I go there periodically.**

Q. Who lives at that address besides you?

A. **My sister; her son.**

Q. There was some --

A. **My mother was visiting then. She's sick.**

Q. She doesn't live there?

A. **No.**

Q. Okay. You were here throughout the entire trial. I want to direct your attention to the two cell phones that are in question here.

One of the cell phones, does it belong to you, the grey one, the grey and white one or the --

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1 A. Later, later she contacted me.

2 Q. Later, what time?

3 A. **I'm gonna say about 2:00 or so.**

4 Q. P.m.?

5 A. **P.m., yeah.**

6 Q. She contacted you and did what?

7 A. **Asked me to come and get her. She was havin' a problem with somebody. She told me -- asked me to come and get her.**

9 Q. Who was she having a problem with?

10 A. **One of her clients.**

11 Q. Who would that client be?

12 A. **That client would be Mr. Isaacson.**

13 Q. What kind of client is he to her?

14 A. **He's considered a john.**

15 Q. Okay. What does that -- are you trying to tell me that she is a lady of the evening?

17 A. **She's a call girl.**

18 Q. Okay. Why would she contact you to help her with this particular john?

20 A. **Because -- you want me to be frank?**

21 Q. Yeah. Be frank if that's what --

22 A. **Okay. The guy ejaculated before his hours. She charged \$200 an hour. He ejaculated before his hour. He was dissatisfied. She told me that he was acting belligerent, can I come give her a ride.**

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1 A. **Yeah, it belongs to me.**

2 Q. What about the black one?

3 A. **The black one belongs to Sheila.**

4 Q. Tell us who Sheila is.

5 A. **Sheila is Kelly Carpenter.**

6 Q. And who is she to you?

7 A. **A friend.**

8 Q. Okay. Why would you be in possession of her cell phone?

9 A. **Well, I was with her previously, and her phone went dead, and she used my phone.**

11 Q. Okay. The phone that the police found you with, too?

12 A. **The grey phone they're speaking about.**

13 Q. Okay. When were you with her previously? I'm directing your attention to November 29th of 2011. Were you with her that day?

16 A. **Earlier that day, yeah.**

17 Q. And what were you doing with her that day?

18 A. **I gave her a ride.**

19 Q. From where to where?

20 A. **Well, first we went to -- we went a couple places.**

21 Q. Okay.

22 A. **I dropped her off. She left in her car.**

23 Q. What does she drive?

24 A. **She drive a black Honda.**

25 Q. Okay. And?

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1 Q. Slow down.

2 A. **Huh?**

3 THE REPORTER: You have to slow down.

4 A. **Excuse me.**

5 MR. BRAMBLE: I'm going object to anything this other supposed woman named "Sheila" said.

7 THE COURT: Sustained.

8 MR. BRAMBLE: Thank you.

9 BY MS. FOSTER:

10 Q. Okay. You responded because she had you -- the information had been relayed to you that this particular john wasn't living up to his end of the bargain; is that a fair statement?

14 A. **Correct.**

15 Q. And what was your purpose of confronting him? What were you planning on doing with that information?

17 A. **I was just givin' her a ride. She asked me to pick her up, and she told me where to pick her up at.**

19 I was proceeding through the parking lot, and I see this guy. I'm thinking he asking me for direction. I roll down the window, and all I heard him say was "MF" something. You know, he say "You guys" something. That's all I remember. And I told them that as well.

24 And when Wyoming Police Department first confronted me. I also told this gentleman here (indicates)

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1 that "What are they on, some racist stuff?" I say this
2 because at the time I didn't notice was a guy that
3 Sheila had dated, because I hadn't seen her yet.
4 Q. Okay.
5 A. So, that's where that came in at.
6 Q. Okay. What happened after this incident with the name --
7 the man calling you a name?
8 A. Whatever after that, I --
9 Q. Yeah.
10 A. -- I proceeded out. I didn't see her.
11 Q. You didn't see her?
12 A. I didn't see Sheila. Swiss Valley is across the street from
13 1833 Prairie Parkway. So, I went back over there to wait on
14 her; she supposed to meet me back there.
15 Q. So, Swiss Valley and where you were staying with your
16 mother, or your brother or sister, whoever, is right across
17 the street from where these incidences occurred; correct?
18 A. Correct.
19 Q. Okay. And you never saw her after that day?
20 A. I didn't see after that. I didn't see her. I got arrested
21 before I seen her again.
22 Q. Okay. So, let's back up to November 14 of 2011. Do you
23 remember anything about that date whatsoever?
24 A. The 14th? I can't -- I can't really remember what I was
25 doing the 14th.

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1 Q. Did you ever have a -- do you ever have a reason to be in or
2 around the Swiss Valley Apartments?
3 A. No.
4 Q. Had you ever met the gentleman who testified here this
5 morning, Mr. Gray?
6 A. No. I never met him.
7 Q. Never saw him before?
8 A. No.
9 Q. Did you know him to be one of this Sheila's johns?
10 A. Nope, not that I know of.
11 Q. Okay.
12 A. I never seen him.
13 Q. And your only involvement -- let me ask you this: There was
14 testimony that your cell phone was found -- your cell phone
15 number was found on Mr. Isaacson's phone. Why would that be
16 if you didn't know this gentleman?
17 A. That's because Sheila contacted him before the date. This
18 is not the first time Sheila did this. I mean, if your
19 phone go dead, you use somebody else phone.
20 Q. Can you be a little slower? I don't know if everybody got
21 that.
22 A. I said Sheila contacted him. Her phone was dead. I
23 explained that to the officers, as well, that was my phone.
24 Officer -- the second officer that testified, I explained
25 that to him. That's not in the police report, nor is me

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1 calling racist in the police report. They never said that.
2 Q. So, they -- the con -- about you calling them racist didn't
3 make it into the police report?
4 A. I'm saying none -- yeah.
5 Q. But did you answer the question as to why his number would
6 be in a phone that was in your possession?
7 A. Sheila used my phone earlier that day before this incident,
8 approximately 10:30, eleven o'clock, before I got with my
9 daughter and her cousin.
10 Q. Let's talk a little bit about that. There was testimony
11 that you had told the officers that you had taken your
12 daughter to Mel Trotter or something to get a car?
13 A. She had bought a car and she was having trouble. She called
14 me to meet her down there to elaborate with them the problem
15 -- explain the problem she was havin' with the car. That
16 happened.
17 Q. Was that that day?
18 A. That happened that day.
19 Q. Where did that happen in relationship to your driving this
20 Sheila around?
21 A. Okay. I was with Sheila previously, before that. Then I
22 got with my daughter.
23 Q. What time were you with --
24 A. I came back -- I came back after being with my daughter, and
25 me and Sheila was together again. I dropped her off.

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1 Q. Where did you drop her off?
2 A. I dropped her off at Swiss Valley.
3 Q. Okay. Where did you pick her up from?
4 A. I didn't pick her back up. I was detained before I got with
5 her.
6 Q. I'm backing up. Where did you pick her up originally before
7 you dropped her off at Swiss Valley?
8 A. I met her in the parking lot across the street from Swiss
9 Valley.
10 Q. Is that where you were staying?
11 A. No. I go there periodically because my clothes is over
12 there.
13 Q. Did you meet her at the location where they eventually
14 arrested you?
15 A. Yes, I did.
16 Q. How did she get there?
17 A. She got there by her car.
18 Q. Why did she need you to drive her across the street if it's
19 across the street?
20 A. I was with her. I didn't say I drove her across the street.
21 Q. You walked with her across the street?
22 A. That's where I -- that's where she was. That's where Sheila
23 was.
24 Q. I just want to make sure we're clear about the -- I don't
25 want the jury to be confused. I want the jury to understand

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1 your side of these events; okay?
2 A. **Okay. Ask me again.**
3 Q. I'm confused, and I'm sure they're confused. So, let's
4 backtrack and maybe we'll do it one more time.
5 Starting off with your day, where -- who did you
6 meet up with first, your daughter or Sheila?
7 THE COURT: Excuse me. Excuse me. What time
8 period are we talking about here?
9 MS. FOSTER: We're talking about the November 29,
10 2011.
11 BY MS. FOSTER:
12 Q. What time -- who did you meet up with first, the daughter or
13 Sheila?
14 A. **Sheila.**
15 Q. Where did you meet her?
16 A. **I met her in the parking lot.**
17 Q. Parking lot where?
18 A. **Across the street from Swiss Valley --**
19 THE COURT: Excuse me. Can we have a time?
20 BY MS. FOSTER:
21 Q. What time?
22 A. **-- 1833. Possibly 9:30 or so.**
23 Q. In the morning?
24 A. **In the morning.**
25 Q. You say, "Across the street from Swiss Valley." Would that

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1 be the parking lot where you were hanging your hat?
2 A. **Where I was arrested at, yes.**
3 Q. 1833?
4 A. **1833 Prairie Parkway.**
5 Q. Did she come to that location or did you bring her to that
6 location?
7 A. **She came in her own car, a black Honda.**
8 Q. She came in to that location for what purpose?
9 A. **She came there for the purpose to work that day.**
10 Q. To work doing what?
11 A. **Prostitution.**
12 Q. Okay. Why did she need to come to your location to do her
13 call girl thing?
14 A. **Because she's married and she has nowhere else to do it at.**
15 Q. So, was she going to do -- meet the john at your apartment
16 or somewhere else?
17 A. **No. She -- she comes there to meet me because it's a setup**
18 **through her backpage. It's set up through the backpage**
19 **through someone else.**
20 Q. Who's the someone else?
21 A. **Brittany Heywood.**
22 Q. Who is she?
23 A. **She's the one that set up the backpage. She, she's the one**
24 **that put it together.**
25 Q. Okay. Both these backpages or just one?

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1 A. **Both of 'em.**
2 Okay. So, Sheila, with you at 9:30 in the morning, and
3 what happens then?
4 A. **She went on a couple dates then.**
5 Q. I'm sorry?
6 A. **She went on a couple dates then, earlier that morning. She**
7 **went again with Isaacson later that afternoon. But I was**
8 **with her, and I went with my daughter after that, if that's**
9 **what you're tryin' to ask me.**
10 Q. I just want to know -- we want to understand a timeline.
11 So, she meets you in the morning; she goes on a couple of
12 dates with a couple of johns. Do you know where she does
13 these dates?
14 A. **No. Sometime they go to a hotel.**
15 Q. Okay. Did she leave her car parked?
16 A. **Most the time she leaves her car up there -- she meets --**
17 **sometimes she have a hotel. Sometimes the john and she**
18 **meets 'em at the designated spot.**
19 Q. Okay. So, a john will meet her, say, at the Prairie Parkway
20 area, and then they will go somewhere else; is that a fair
21 statement?
22 A. **Yeah, that's a fair statement, because she got to be sure**
23 **that they aren't the police.**
24 Q. So, then she goes; she comes back. Does she go again and
25 come back?

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1 A. **Yeah.**
2 Q. And then in that period of time, at some point you have an
3 issue with your daughter's car. You and your daughter go
4 and see about a problem with her car?
5 A. **Right.**
6 Q. How old is your daughter?
7 A. **My daughter is 21.**
8 Q. So, she's young. And then when are you done with your
9 daughter? What time?
10 A. **I went there about maybe 40 minutes or so.**
11 Q. Yeah, but what time? Do you remember what time it was that
12 you were, "Bye, daughter. I'm home now" or whatever?
13 A. **I'm about 12:45, one o'clock, I imagine.**
14 Q. And then when did Sheila return?
15 A. **Sheila returned maybe 20 minutes, 25 minutes after that.**
16 **Ten after 1:00 or so. I explained that to the officers as**
17 **well. That's not in the police report.**
18 Q. Okay. Well, let's not worry about what's in and what's not
19 in the police report. That's why we have people here to
20 testify.
21 So, she then goes to do this thing with
22 Mr. Isaacson and then contacts you because Isaacson is
23 shortchanging her for some reason. Does that sum up
24 everything as I understand it?
25 A. **He's not shortchanging her, but he be question his money**

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1 his argument.
2
3 Q. He didn't get a full hour. Okay. You went to assist?
4 A. I went to give her a ride, yeah, assist her in giving her a
5 ride, yeah.
6 Q. From --
7 A. Swiss Valley.
8 Q. -- Swiss Valley to 1833 Prarie Parkway?
9 A. I went there, yeah, to get her from there.

10 MS. FOSTER: I have nothing further. Thank you.

11 THE COURT: Mr. Bramble?

12 MR. BRAMBLE: Thank you.

13 **CROSS-EXAMINATION**

14 **BY MR. BRAMBLE:**

15 Q. So, you want this jury to believe that these two men -- let
16 me start with this -- these two men, who don't even know
17 each other, have the same identical thing happen to them,
18 and identify you, and you're saying that's not accurate?
19 A. I want this jury to believe that I think the police is
20 tryin' to tie me in with someone that's been posing as a
21 police officer. That's what I think. Because since I've
22 been incarcerated, somebody else has been posin' as a police
23 officer and stoppin' people and robbin' people.
24 Q. You know this how?
25 A. Pardon me?

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1 Q. How?
2 A. Well, one incident concern a woman being pulled over.
3 Q. This is my job, and you're tellin' me things that I've never
4 heard.
5 A. Repeat that.
6 Q. Sure. How do you know this information?
7 A. It was on the news, number one.
8 Q. Really?
9 A. Yeah.
10 Q. Really?
11 A. Yeah.
12 Q. What newscast?
13 A. I'm not sure of what newscast, but it was on the news.
14 Q. Can you tell me the --
15 A. He's a detective. He knew about it, I'm sure. He admitted
16 it hisself [sic] that there was ongoing investigation.
17 Q. Well, admitted there was an investigation, an investigation
18 involving you.
19 A. Okay.
20 Q. Well, you indicated you called the police racist?
21 A. I called who?
22 Q. Did you call the police racist, or how did the term "racist"
23 come up?
24 A. I'm not hearing you. I can't hear that good because you
25 ain't by the microphone.

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1 Q. How did the term "racist" come up?
2 A. The term "racist" -- because me and the gentleman is in
3 cars, and we have words. When they come and -- when they
4 come and detain me, I say, "What you guys all some racist
5 stuff?" Because me and the gentleman traded words. I'm
6 thinking he -- I don't know what he told 'em. I'm thinkin'
7 he just had a problem with me of some kind, and they
8 arrested me to that.

9 At the time, I didn't know Sheila was involved.

10 This was -- Isaacson was involved with Sheila.

11 Q. Well, if you told the police all this stuff, why don't you
12 think it's not in the police report?
13 A. What was the second officer's name? I want to call his name
14 correctly.
15 Q. Officer Ferguson.
16 A. Well, he could have testified that I said that. Did I say
17 that or not?
18 Q. You can't ask questions here. You just answer them.
19 Understood? Do you understand?
20 A. Yeah, I understand.
21 Q. All right. You seem to have a lot of familiarity with how
22 Sheila -- this Sheila person -- how her business operates.
23 A. Okay.
24 Q. Is that true?
25 A. Yeah.

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1 Q. And do you help her in this business?
2 A. Kind of, sort of.
3 Q. You're her business manager, shall we say?
4 A. You could say that.
5 Q. All right. Another way to describe that would be that
6 you're her pimp?
7 A. No. We not gonna say that.
8 Q. But you're just her business manager?
9 A. I'm gonna say we're associates.
10 Q. A moment ago you said you were her business manager.
11 A. You puttin' in the sense that we was associating, and we was
12 in a business venture. You was puttin' it in that manner,
13 so I --
14 Q. You're in a business venture with her.
15 A. We are -- we are associates.
16 Q. Well, I'll ask you the question again. You already said
17 you're her business manager. What does that entail?
18 A. That we are associates.
19 Q. What does it mean by "associates"?
20 A. That we have an agenda that we both tryin' to meet.
21 Q. You have an agenda you're both tryin' to meet?
22 A. Yeah.
23 Q. What is the agenda?
24 A. To make some money.
25 Q. And you get some of her money that she makes?

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1 A. Me and a couple more people, yeah
2 Q. Okay. So, the proceeds this Sheila -- supposedly
3 exists -- the proceeds from her being a call girl, you take
4 a cut of?
5 A. I don't take a cut. I get paid a portion for being
6 associate of, let's say, an organization of some kind.
7 Q. Before I go through the exhibits, I'm going to ask you, do
8 you recall being questioned by Officer Ferguson? Do you
9 recall being questioned by him?
10 A. Which one is Officer Ferguson?
11 Q. The second one who testified. Do you recall being
12 questioned by him?
13 A. Yes, I do.
14 Q. Do you remember telling him that -- when he asked you if you
15 were in the Swiss Valley parking lot, you said you were
16 there briefly, but just passed through?
17 A. Right. Yes, I did.
18 Q. That you had -- when you returned from Mel Trotter, you
19 turned around and then went back out. Do you remember
20 tellin' him that?
21 A. I told him that my daughter and her cousin and I went to
22 Mel Trotter to discuss her car problems with Mel Trotter's
23 car lot.
24 Q. All right. But I'm asking you specifically about being in
25 the Swiss Valley parking lot.

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1 A. Okay.
2 Q. And you told the officer that you just turned around briefly
3 in that parking lot; correct?
4 A. I told him that initially, yes.
5 Q. And you denied ever encountering anyone there; didn't you?
6 A. No. I told him that I had some words with a guy. At the
7 time I didn't know this Isaacson was affiliated with Sheila.
8 I didn't find that out till --
9 Q. Let me ask you this: Before you told him that you'd met
10 someone, you initially said you'd never encountered anyone
11 there?
12 A. No. I told him that I -- that I encountered a guy. That's
13 where the racism came in, my statement about the racism.
14 That's where that came in, that concerning that guy.
15 Q. So, if the officer testified under oath here that your first
16 statement to him, you told him you never encountered
17 anybody?
18 A. Okay. I did say that initially. I said that. I admitted
19 that.
20 Q. So, you lied?
21 A. I lied.
22 Q. You lied and said you never encountered anyone?
23 A. Initially, yes.
24 Q. Who went with you to Goodwill?
25 A. My daughter and her cousin, Booter.

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1 Q. After you told the officer that you never encountered
2 anyone, you later told them that you encountered some
3 white guy or Hispanic guy who yelled mother-fucker or
4 something at you?
5 A. Right.
6 Q. And that you denied ever getting out of your car?
7 A. That's correct.
8 Q. Then you said the guy was asking directions or something
9 like that.
10 A. No. I said I thought that's what he was asking me, because
11 the window was up. I let the window down, and that's when
12 he was making accusations about you mother-fuckers.
13 Q. When the officer said, "Why do you ask directions from
14 someone calling you a mother-fucker" --
15 A. Well, initially my line to him was because I figured it had
16 something to do with Sheila. That was initially why I told
17 him that. I wanted to find out what happened first.
18 Q. Talked to you about the cell phones; correct?
19 A. Right.
20 Q. And Exhibit 7, that's your cell phone?
21 A. Yes, it is.
22 Q. Whose is Exhibit 8?
23 A. That's Sheila's cell phone.
24 Q. You don't contest that your number was corresponding with
25 Mr. Isaacson?

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1 A. Okay.
2 Q. Your phone was being used to correspond with --
3 A. I told you that Sheila used my phone. Her phone went dead.
4 When they got the phone, it was dead. He attested that as
5 well, the officer did.
6 Q. You're saying Sheila used the phone, but you're not denying
7 that Mr. Isaacson was on your phone?
8 A. I'm not denying that, no.
9 Q. Why did you lie to the officer initially?
10 A. I lied to the officer initially because I didn't know if it
11 had something to do with Sheila or not.
12 Q. Why would that matter? Why do you have to lie?
13 A. Because I don't know what -- what's went down. I don't know
14 what's goin' on.
15 Q. So, you automatically lie?
16 A. We gonna say a "fib." We ain't gonna say a "lie," we're
17 gonna say a "fib."
18 Q. Well, we said a lie a moment ago, and you agreed to that.
19 A. Well --
20 Q. Fib or lie, it --
21 A. You was happier with a lie than a fib.
22 Q. Fib, lie, it wasn't the truth?
23 A. So did Isaacson. He lied.
24 Q. Who lied?
25 A. Isaacson and Mr. Gray, both of them lied.

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1 Q. You're saying both of them --
2 A. **So, whatever you hold against me, I against them as well.**
3 Q. You're saying both Mr. Gray and Mr. Isaacson, who don't know
4 each other, came in here and by chance told the same story
5 that you -- hold on -- that you robbed them?
6 A. **Okay. Mr. Isaacson's not here. Why he's not here?**
7 **Mr. Gray said somebody was slender, now he says something**
8 **different.**
9 Q. Mr. Isaacson testified already, and we've got that testimony
10 on the record.
11 A. **Okay, well, why he's not here?**
12 Q. Do you understand, you don't ask the questions? You can ask
13 your attorney that.
14 A. **You want me to answer it properly; right? You're looking**
15 **for the honesty and truth; right?**
16 Q. Yeah.
17 A. **Okay. Well, that's what I'm tryin' to bring to you.**
18 Q. From someone who's already admitted he lied?
19 A. **Okay. Yes, I did. I lied.**
20 Q. So, Mr. Isaacson, his number is on Exhibit 7, your phone;
21 correct?
22 A. **Sir, I can hear you when you're by there or by that**
23 **microphone there (indicating).**
24 Q. Your number was on Mr. Isaacson's phone?
25 A. **Okay.**

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1 Q. Correct?
2 A. **Mr. Isaacson's phone what?**
3 Q. Your number is on Mr. Isaacson's phone.
4 A. **Right. You asked me that three times. I said, "yes."**
5 Q. I want to make sure. Well, you have to just answer the
6 question.
7 So, you don't deny that --
8 A. **No, sir.**
9 Q. -- that your phone was used to correspond with
10 Mr. Isaacson's?
11 A. **Yes.**
12 Q. I'll show you what's marked Exhibit 9, \$497 that was seized
13 from you.
14 A. **Okay.**
15 Q. Do you agree that that was seized from you?
16 A. **Yes, I am. I won it at the casino the night before. The**
17 **records reflect that at the casino.**
18 Q. So, this \$500, did you tell the officers that?
19 A. **I believe I did.**
20 Q. So, if they don't have that --
21 A. **At one point I shut down on 'em because they start actin'**
22 **very racist with me, as I said. So, I shut down on 'em.**
23 Q. What did they do that was racist?
24 A. **He was tellin' me to "shut up," you know. He askin' me**
25 **questions. He tellin' me to "shut up." You know, they got**

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1 -- they got everybody there on the ground.
2 Q. Who told you to sit?
3 A. **The second officer sitting to the right there (indicating).**
4 Q. Officer Ferguson?
5 A. **Pardon me?**
6 Q. Officer Ferguson.
7 A. **Ferguson. I ask you the name so I can say they names.**
8 Q. He told you to "shut up," is your testimony?
9 A. **Yeah. He's tellin' me -- he's askin' me questions -- this**
10 **detective here -- he's tellin' me to "shut up." You know,**
11 **then you got nine cars there. You got nine police officers**
12 **there.**
13 Q. All right. What else did they do that was racist besides
14 tell you to shut up?
15 A. **I thought they was being racist because me and the white guy**
16 **had some words, and they was on me like that. They was**
17 **already deeming me guilty of something that they hadn't even**
18 **investigated yet. That's why.**
19 Q. Well, do you think you helped yourself by lying?
20 A. **I don't know. I probably did. It depends. Did**
21 **Mr. Isaacson and Gray help theyself [sic] by lyin'?**
22 Q. Your testimony -- you keep saying they're lying. They made
23 this up?
24 A. **I can't say what they made up.**
25 Q. But you're saying they're lying?

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1 A. **They're lying if they said I robbed them; correct. They're**
2 **lying if they said that I robbed them. Yes.**
3 Q. Exhibit 6, do you recognize that?
4 A. **Yeah.**
5 Q. And --
6 A. **He also said it was long-sleeved, too.**
7 Q. Is this your shirt?
8 A. **That's a short-sleeved shirt.**
9 Q. Is this your shirt?
10 A. **Yes, that's my shirt.**
11 Q. It's the shirt you're wearing in the picture; correct?
12 A. **Pardon me?**
13 Q. It's the shirt you're wearing in the picture?
14 A. **Correct.**
15 Q. So again, I want to ask you this question. Listen, okay,
16 before you answer.
17 A. **Okay.**
18 Q. So, it's your testimony that two men who don't know each
19 other, identify you as doing basically the identical thing,
20 and you're saying they're lying?
21 A. **I never met or never seen Mr. Gray until today. So, what**
22 **you got goin' on, I don't know. Mr. Isaacson, I think he's**
23 **a dissatisfied customer and he cried robbery because of**
24 **those reasons. That's all I can tell you about that.**
25 Q. Okay. Wow, isn't it amazing how similar it is between

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I'm saying this -- we here (indicating); the prosecutor

Q. Why Mr. Gray wait until the 29th? He forward about somethin' he was robbed about? Why he wait?

that was present. That's what I'm saying.

Q. He was present at the preliminary exam on December 14. He was there. He just -- you just waived the hearing, so you didn't hear his testimony. He didn't just come forward on the 29th.

Q. You're saying they did what?

A. You lookin' for the truth. Why you didn't ask him about the robberies that's goin' on --

A. I'm saying that they showed 'em my photo before he picked me out, if he picked me out. Or, he made a mistake, one of the two.

Q. Because there aren't any.

Q. But you're saying -- your first thought was that the --

A. -- and about somebody else impersonating a police officer? Why didn't you ask him that and see what he had to say?

A. I didn't say my first thought. I gave you two synopsis of what I think. You're asking me to speculate, so I did.

Q. We can call him back.

Q. One of your speculations here is that this is part of some conspiracy?

A. You sure can.

A. I don't -- I don't know what it is, sir. I know I don't know Mr. Gray. I never seen him before today.

Q. Okay. Listen to my question here, because you get off track here. You said a moment ago that Mr. Gray was lying?

Q. So, but you're saying one of the scenarios here is that the detective showed your photograph to Mr. Gray before you went in and identified you in that lineup?

A. I don't think I said he was lying. I said I can't attest to what Mr. Gray problem was, basically. I don't know. I never seen Mr. Gray, so I can't attest to anything about him.

A. Or Mr. Gray made a mistake, sir. That's what I'm sayin', those two things. Yes, that's what I'm saying.

Q. And you don't know why they would -- why would Mr. Gray make up a story about --

Q. Why didn't you tell the police right upfront what had happened here?

A. I think Mr. Gray made a mistake, that's what I think -- when they showed him my photo before he came in here. That's the only thing I can deduce from that.

A. Well, already, law is being broken by both sides. That's why. I'm breakin' the law, they breakin' the law, she breakin' the law. That's why.

Q. But you later told -- you didn't tell them anything about

201

203

Q. Okay. So, you think that someone showed him the photograph to pick you out of the lineup?

your elaborate business relationship with Shella; did you?

A. Pardon me?

A. They never asked. They never did put what I said in the report anyway, other than being with my daughter. That's all they put there.

Q. You were picked out of the lineup.

Q. So, you're saying they left out a bunch of stuff out of the report?

A. Okay.

A. Yeah, that's what I'm saying.

Q. He identified you as being the one who accosted him and robbed him. Do you understand that?

Q. Intentionally?

A. Yeah, I understand that.

A. Yeah.

Q. Tell me, do you think someone showed him your picture beforehand? Is that what you said a moment ago?

Q. So, these police officers who have, I don't know how many years of experience, risked their entire career and left -- intentionally left things out of their report just to get you?

A. If he said that I did it, they did somethin'. I know I haven't seen Mr. Gray. I never met Mr. Gray till today.

A. Repeat that.

Q. What are you saying they did?

Q. Sure.

A. Who was what?

A. I can hear you when you're closer to the table or by the microphone.

Q. What are you saying they did with Mr. Gray?

Q. You're saying that these officers risked their entire career by intentionally omitting things from the report to get you?

A. I don't know what they did, sir.

A. I guess I am saying that.

Q. Are you saying they showed him a picture?

Q. Well, let's not guess. You are saying that; aren't you?

A. They did something.

A. Yeah.

Q. Well, what?

Q. So, we have Mr. Gray, who's either mistaken or lying; correct?

A. How do I know? Ask him.

A. Right.

Q. You're thinking they put him up to this?

A. Listen. You askin' me about Mr. Gray, man. All I'm tellin' you is I don't know what they -- what Mr. Gray. I never seen him before today.

Q. What are you saying -- who are you saying -- who are the

202

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1 Q. Mr. Isaacson, who is either mistaken or lying?
2 A. You got Mr. Isaacson as being satisfied.
3 Q. So, when he says that you robbed him, that's a lie?
4 A. I can't rob him if I never got out the car.
5 Q. You're saying that's a lie?
6 A. Yeah. I'm saying that's a lie.
7 Q. So, we have Mr. Gray either mistaken or lying, Mr. Isaacson
8 lying, the police officer's intentionally omitting things
9 from their report?
10 A. Yeah.
11 Q. All those things happened?
12 A. They sure did.
13 MR. BRAMBLE: I have nothing further.
14 THE COURT: Ms. Foster?
15 MS. FOSTER: Nothing, your Honor.
16 THE COURT: All right. You may step down. Thank
17 you.
18 (At 3:59 p.m., witness stepped down)
19 THE COURT: Any further witnesses, Ms. Foster?
20 MS. FOSTER: Your Honor, there may be one rebuttal
21 witness. We are trying to get in contact with this
22 individual. So we're going to ask the Court -- it's
23 four o'clock now -- if we can recess for the day. And I
24 know we're supposed to start back up on Thursday morning.
25 That will give us enough time to try to track down this

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1 potential rebuttal witness; interview this individual and
2 see if this person could be called as a witness for the
3 defense.
4 THE COURT: In your case-in-chief to counter what?
5 MS. FOSTER: No, no. This would only be a
6 rebuttal witness, your Honor.
7 THE COURT: All right. Well, Mr. Bramble, if they
8 don't call anymore witnesses, do you contemplate rebuttal?
9 MR. BRAMBLE: I have some brief rebuttal already,
10 your Honor, if you want me to put that on.
11 MS. FOSTER: I don't have time, your Honor. I'm
12 asking the Court if we can adjourn and pick this up on
13 Thursday morning.
14 THE COURT: All right. Okay. I understand.
15 Ladies and gentlemen of the jury, I'll excuse you
16 now until nine o'clock Thursday morning. I'm confident that
17 we can finish the case on Thursday. We may or may not have
18 brief testimony Thursday morning, and then we can go into
19 closing arguments and instructions, and you can commence
20 deliberations sometime Thursday morning.
21 Again, I'll caution you not to discuss the case in
22 any way with anybody; not to have any contact with anybody
23 involved in the case. Don't visit the scene; don't conduct
24 any investigation or experiments on your own; ignore any
25 potential media coverage. With that, you are excused till

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1 nine o'clock Thursday morning.
2 (At 4:02 p.m., jury exits courtroom)
3 THE COURT: Ms. Foster, you have a commitment at
4 this time; correct?
5 MS. FOSTER: Yes, your Honor.
6 THE COURT: All right. Well, we'll recess until
7 -- we'll be back in court at 9:00. Please be here no later
8 than 8:30 and we can go over instructions.
9 MS. FOSTER: Thank you, Judge.
10 THE COURT: We're in recess.
11 (At 4:02 p.m., concluded)
12 --oo00oo--

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1 OFFICIAL REPORTER'S CERTIFICATE

2
3
4 STATE OF MICHIGAN)
5 COUNTY OF KENT) ss

6 I, Leslie Rydahl, Court Reporter in and
7 for the Circuit Court for the County of Kent, State of Michigan,
8 do hereby certify that I reported stenographically the
9 proceedings held in the above-entitled cause before the Honorable
10 GEORGE S. BUTH on March 27, 2012; and do further certify that the
11 foregoing transcript is a true and correct transcript of my
12 stenographic notes of said proceedings so reported and
13 transcribed by me.

14
15
16
17 Leslie L. Rydahl CSR 4078
18 Official Court Reporter

19 Dated: Grand Rapids, Michigan
20
21
22
23
24
25

208

OFFICIAL REPORTER'S CERTIFICATE

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) SS
COUNTY OF KENT)

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stenographic notes of said proceedings so reported and
transcribed by me.



Leslie L. Rydahl CSR 4078
Official Court Reporter

Dated: 9-11-12
Grand Rapids, Michigan